

arrears of interest which, at the testator's death, were due in respect of the mortgage, and then distribute the balance as income up to, but not exceeding, the interest accrued since the testator's death on the mortgage, and any excess was to be treated as capital.

FIDUCIARY RELATION — GIFT — NATURAL AFFECTION — DUAL RELATION EXISTING BETWEEN DONOR AND DONEE—INDEPENDENT ADVICE.

*In re Coomber, Coomber v. Coomber* (1911) 1 Ch. 174. This was a family quarrel in which the validity of a gift from a mother to her son was impeached. Under the father's will all his property devolved on the mother, part of it being a long lease of a tavern. A son Harry had assisted his father in carrying on the business of the tavern and after his death he continued to do so for his mother. In September, 1905, she executed an assignment of the lease to him for his own use and the next day the license was transferred to him. No consideration was expressed in the deed, but Harry agreed to let his mother have £3 per week out of the business, and this sum was regularly paid to her in addition to the £3 per week derived from other property during her life. The judge who tried the action also found as a fact that the mother made the assignment in the belief that she was thereby carrying out her deceased husband's intention. The assignment was prepared by a solicitor who had acted for the mother in the affairs of her deceased husband's estate. He saw her alone and explained the transaction and she understood what she was doing. She died in July, 1906. One of the other children brought the action claiming a declaration that Harry was a trustee of the property so assigned to him. Neville, J., held that the gift being made by the mother to her son who, while carrying on the business as her agent, was in a fiduciary relationship to her, the burden of proof was on him to rebut the presumption that the gift was induced by that relation, and he thought he had failed to discharge that burden by shewing that his mother was independently advised; but he thought he had done so by shewing that the gift was not due to any relationship which the carrying on of the business as her agent had established but that it was wholly independent thereof and induced by natural affection and because she believed she was thereby effectuating her late husband's wishes. The action was therefore dismissed.