

HON. MR. JUSTICE LENNOX.

NOVEMBER 3RD, 1913.

RE HARRISON.

5 O. W. N. 232.

Will—Construction—Codicils—Gift of Income to Widow—Remainder to Others—Trust for Sale—Subsequent Permission to Encroach on Capital for Maintenance—Estate taken by Widow not fee Simple—No Repugnance.

LENNOX, J., *held*, that where a will and certain codicils had given the testator's widow the income of certain property during her widowhood with remainder to named persons, that a subsequent codicil reciting that whereas the widow has been up to that time restricted to the use of the income alone, but thereafter she shall have "the right in addition thereto to use the principal or so much thereof as she may require according to her own judgment, for her support and maintenance," did not confer upon the widow an estate in fee simple but only gave her a power of encroachment on the capital.

Re Davey, 17 O. W. R. 1034, followed.

Re Jones, Richards v. Jones [1898] 1 Ch. 438, distinguished.

Motion by the executors of Martha Cox deceased, for the construction of the will of Henry Harrison, who was the first husband of Martha Cox.

F. F. Treleaven, for the executors.

J. A. Soule, for an adult beneficiary.

J. R. Meredith, for the Official Guardian.

HON. MR. JUSTICE LENNOX:—Martha Cox, the testatrix, who was the widow of Henry Harrison, is a trustee of his estate and the real estate is vested in her amongst other things, expressly for the purpose of sale and distribution. She has an absolute power of disposal and this is in no way affected by her second marriage.

By the will itself, without the codicils, all the real and personal estate of the testator was vested in the testatrix and two others, upon trust, as to the real estate and such part of the personal estate as was not specifically bequeathed, to divide and distribute it amongst certain persons and classes of persons upon the death or second marriage of the testatrix.

It is not necessary to consider whether the devise in trust, coupled with the direction to divide and distribute, conferred a power of sale or not; for, by the first codicil to his will, the testator substituted the testatrix as his sole trustee in the place of the three originally appointed, and consti-