

lands to S. E., wife of W. B., during her natural life, to be paid by the executors into her own hands, and after her death unto and amongst J. B., M. B., and R. B. This was held by Rokeby and Eyre, JJ., to give S. B. the lands for life, Holt, C.J., strongly inclining to the contrary opinion.

See also *Baines v. Dixon*, 1 Ves. Sr. 41. In *Bignall v. Rose*, 24 L.J. Ch. 27, *Kindersley, V.C.*, says, p. 29: "I think there is equally a gift to him of the leasehold house by the terms 'rent of the house.' An undefined gift of the rents of the property is, according to the general rule, a gift of the absolute interest."

[Reference to *Mannox v. Greener*, L.R. 14 Eq. 457, at p. 462, per *Malins, V.C.*; *Bunbury v. Doran*, Ir. R. 9 C.L. 284; cases in *Jarman*, 6th ed., pp. 1296, 1297; *Blann v. Bell*, 2 D. M. & G. per Lord *Cranworth*, at p. 781.]

But here there is not a bequest of the rents and profits simpliciter. The testator seems to have contemplated that there would be some encumbrance upon the several parcels of land, and he provided that the trustees should see to the payment of all charges against each portion of the estate, and then pay the residue to the beneficiary. If there were in fact any encumbrance, it could scarcely be argued that the trustees were ousted from the management of the property, and I do not think that the circumstance that no encumbrance (except taxes, etc.) exists, changes the title: [Reference to *Going v. Hanlon*, Ir. R. 4 C.L. 144.]

But there is another difficulty in the way of the beneficiaries. The will provides for sale by the trustees, "as and when they shall deem wise," of any portion of the estate. This it seems to me necessitates the trustees retaining full disposing power over all the estate. There is no saying when a state of affairs will arise when for the interest of those in remainder the trustees may think it wise—and justly think it wise—to sell. The power to sell is inconsistent with the life estate claimed in the land itself.

The consent of the children of these beneficiaries does not affect the legal estate and rights of the trustees—although it might justify the trustees in allowing the life beneficiaries to manage the property if they felt so inclined. I can only declare the rights of the parties—the Court has no jurisdiction to compel them to act in a common sense way and to lay aside personal feeling in a business matter.

No attempt has been made to attack the good faith or honesty of the acting trustee; nor is any application made to remove him.

Success being divided, the applicant *Alfred Curran* will