

STREET, J.

APRIL 11TH, 1903.

CHAMBERS.

RE SHORTREED.

Will—Bequest to Widow—Maintenance of Children—Absence of Trust in Favour of—Rights of Children in Respect of Fund—Rights of Child Born after Will Made.

Motion by the widow and executrix of John Shortreed for an order under Rule 938 construing clauses in the will of the testator. The testator (1) appointed his wife and two brothers Robert and Gideon executors; (2) bequeathed to Robert and Gideon \$300 to be divided equally between them for their trouble as executors; (3) bequeathed to his wife all his household furniture, etc., and all moneys to be received from any insurance upon the testator's life, "my said wife to support and maintain during their minority my children living at my decease," and the bequest to be in lieu of dower and of compensation for her trouble as executrix; (4) devised and bequeathed all the residue of his estate to his executors in trust to convert into money and to divide it among his three children, four-tenths to his son, and three-tenths to each of his two daughters, such share to become vested upon his decease, but to be payable to each child at 21; (5) directed that until each child should attain 21 his executors should invest the share of each and pay the income, so far as might be necessary, to his wife from time to time for the educational advancement in life of his "said children;" (6) directed that, in the event of the life insurance moneys not being paid to his wife, she should receive from his other estate such sum as should be necessary to make the whole of the bequest to her \$5,000, or such less sum as shall make the bequest equal to the shares of each of my daughters, "and the shares and proportions herein bequeathed to my said sons and daughters shall for this purpose be abated proportionately to that extent."

A. H. Marsh, K.C., for the applicant.

H. Guthrie, K.C., for the co-executors.

F. W. Harcourt, for the infant Ruth Shortreed.

W. R. P. Parker, for the other infants.

STREET, J.—The position of the widow and children under this will is the same as that which was under consideration in *Allen v. Furness*, 20 A. R. 34. That case and those referred to there seem to establish that no trust in favour of the children is created, although the children are