

cution of the trust imposed on them, it is their desire to husband the revenue from the share so that when the proper time arrives, in some three or four years, the boy may receive a proper collegiate education.

The father bases his claim to this money upon the right which he claims to have to receive it under the terms of the will. If he has no such right, and the executors hold discretion, then I am quite clear that the discretion is being honestly exercised, and that the Court has neither the power nor the inclination to interfere with them in the discharge of the duty imposed upon by the testatrix. This is abundantly plain from cases such as *Gisborne v. Gisborne* (1877), 2 App. Cas. 300, and *In re Bryant*, [1894] 1 Ch. 324.

There has been much fluctuation of opinion upon the question that now arises. Earlier cases are reviewed and discussed in a note to *Hughes v. Hughes* (1784), 1 Bro. C.C. 387, reprinted in 28 E.R. 1193. In that case it is stated that maintenance will not be allowed by the Court where a parent is of ability, although directed by the will.

The case *Mundy v. Howe* (1793), 4 Bro. C.C. 223, decided not long after this, marks the extreme limit to which the Court has gone in the opposite direction. The fundamental principle underlying that decision is, that there is a difference between cases where there is a marriage settlement and cases where the infant takes under a will. Lord Chancellor Loughborough says: "It is perfectly clear from the cases that where the fund is given as a bounty, notwithstanding a provision for maintenance, the father, if of ability, must maintain the child." Although this is so clearly stated, the decision has been frequently regarded as one justifying the opposite conclusion.

I do not need to review the cases at length. They are mostly discussed in *Wilson v. Turner* (1883), 22 Ch.D. 521, which was a decision upon a settlement; and it is explained that *Mundy v. Howe* turned upon there being a contract under which there was an obligatory trust which compelled the trustees to maintain the children. In that case, it was said, the father had the right to demand and receive the income.

I think the claim of the father in this case fails: first, because this was merely a voluntary settlement, which was primarily intended for the benefit of the child, and not to confer any benefit on the father or exonerate him from any legal liability to maintain his child; and, secondly, because the trustees have a discretion, and that which they propose to do is within the limits of the discretion.