

HON. MR. JUSTICE MIDDLETON.

JUNE 5TH, 1913.

RE JOSEPH SHEARD.

4 O. W. N. 1395.

Will—Construction—Gift of All Benefits—Absolute Interest.

MIDDLETON, J., *held*, that a direction by a testator that \$4,000 be invested in the names of executors for the benefit of his son, Frederick, that the income be paid to the latter and that if he shall take unto himself a wife then the money was to be invested in real estate "so that my said son shall have a home for his absolute use and benefit" without gift over, conferred an absolute interest upon the son.

Rishton v. Cobb, 9 Sim. 615, followed.

Petition to determine questions arising in the administration of the estate of the late Joseph Sheard.

W. D. McPherson, K.C., for petitioners.

N. W. Rowell, K.C., for Elizabeth Sheard.

HON. MR. JUSTICE MIDDLETON:—The affidavits filed make it clear that the wife, notwithstanding the suggestions contained in the will, is of perfect mental capacity, and *sui juris*.

The testator directs that \$4,000 shall be invested in the names of his executors, for the benefit of his son Frederick, and that the income shall be paid to him, and if Frederick "shall take unto himself a wife" then the money shall be invested in real estate "so that my said son shall have a home for his absolute use and benefit." There is no gift over.

It is clear upon the authorities that this confers an absolute estate in Frederick. *Rishton v. Cobb*, 9 Simons 615, holds that the estate would be absolute even if the gift of income terminated upon marriage. This decision has the approval of Farwell, J., in *Re Howard*, [1901] 1 Ch. 412. Upon the whole subject see *Re Hamilton*, 27 O. L. R. 445; 23 O. W. R. 549, and in appeal 4 O. W. N. 1170.

Declared accordingly. Costs out of the estate.