

the testator was, that the executors should set aside out of the investments already made, or if they saw fit, invest, \$10,000, and use the income towards the maintenance of those sisters in continuation of the testator's benevolence during his lifetime; and he could not have intended that there should be a period during which they would not receive the aid which he in his lifetime had given and which he contemplated continuing after his death.

The well-reasoned case of *Cook v. Meeker*, 36 N.Y. 15, supports this position. It is there said: "When a sum is left in trust, with a direction that the interest and income should be applied to the use of a person, such person is entitled to the interest thereof from the date of the testator's death." That case is largely founded upon English authorities, although none of them is precisely in point.

Mr. Jones relied upon the case of *Re Crane*, [1908] 1 Ch. 379; but I think that, when carefully considered, it is distinguishable. There a sum of £8,000 was to be paid by the executors to trustees, and these trustees would hold on certain defined trusts, inter alia to pay the income to the testator's daughter-in-law during her widowhood. It was held that the legacy did not carry interest from the testator's death. There the legacy was the capital sum directed to be paid to the trustees; and it was attempted to bring the case within the well-known exception to the general rule which has been recognised where the beneficiaries are infants to whom the testator stood in loco parentis, and the Court has held that a gift of the income in the meantime for the maintenance must be implied, otherwise there would not be any fund for maintenance. *Swinfen Eady, J.*, held that this rule had not been and could not be extended to the case of adults.

That case, it appears to me, has no bearing upon the present one, where the gift is not of the corpus but of income. Four of the testator's daughters, who are sui juris, assent to the contention of the sisters; and this application is only necessary by reason of the misfortune of the remaining daughter.

It will, therefore, be declared that the sisters are entitled to the income derived from \$10,000 from the date of the death of the testator, and that it is competent for the executors to treat as held for this fund interest-bearing securities which came to their hands and to pay the income therefrom (subject to the limitation found in the clause itself) for the maintenance of the three sisters.

The costs of all parties will be out of the estate; those of the executors as between solicitor and client.