

28. Construction — "Proceeds" read "income."—Testator directed his estate to be converted into cash and divided into two equal parts, of which one was to be invested, and the "proceeds" paid to his daughter, A. M., from time to time. On the death of A. M. the executors were directed to take such steps as were necessary to secure to her children, free from others' control, their mother's "interest" in the estate, and, for that purpose, to pay to them, share and share alike, the money invested, or to give them the proceeds, as might best serve the interests of said children. In the event of the death of A. M. before the trusts became dischargeable, the executors were to take steps to secure her interest to her children, in both instances, free from others' control.

Held, as against A. M., who claimed that under the provisions of the will, she took an absolute estate, that the expression "proceeds" should be read as "income," the direction to invest and pay the proceeds as the same accrued conveying that idea.

Held, also, that words showing that on the death of A. M., the children were to have the corpus secured to them, were sufficient to cut down the gift to A. M. to a life estate. *Chubb v. Murray*, 30/23.

29. Construction—Power to dispose of property.—Testator by his will gave to his wife C. M. the use, rents and proceeds of all his remaining real estate, personal property, mortgages, notes, etc., for her own use during her lifetime. At the death of his wife he devised the house and contents to A. M. for her own use and benefit during her lifetime, and at the death of A. M., he devised to his nephews and niece named, the said house and contents "as well as any money or securities which may remain after the death of my wife, C. M."

Held, affirming the judgment of Townshend J., that the disposal of any property which might remain over at the death of C. M., showed an intention to give C. M. the disposition of the property during her lifetime.

In re Thompson's Estate, 14 Ch. D. 263, and *Constable v. Bull*, 3 Det. & Sm., 411, followed. *Re Estate of Paul McDonald*, 35/500.

30. Construction — Title — Interest — Family.—Testator devised to his wife, "all and singular the property of which I am at present possessed, to be by her disposed of amongst my beloved children as she may judge most beneficial to herself and them, and I also order that all my just and lawful debts shall be paid out of the same."

Held (Russell J., dissenting on this point), that the effect of the words of the will was to give the wife an absolute estate in fee simple in the land, and that such estate was not cut down by the reference to testator's children.

Held, also, that, irrespective of the words in the first part of the clause (the land having been charged with payment of debts, necessarily involving a power of sale), it was clearly within the power of the devisee to dispose of the land for that purpose, and the title of her grantee was good as against children and grandchildren of the testator, who claimed that the wife merely took a life estate coupled with a trust.

Held, on appeal, affirming the judgment appealed from, that the widow took the real estate in fee with power to dispose of it and the personality whenever she deemed it was for the benefit of herself and her children to do so. *Melrose v. Beaton*, 38/60; 37 S. C. C. 143.

31. Construction of clause—Residuary bequest.—Testator, by his last will, after providing for his wife during her lifetime, and setting apart a sum of money to be invested after the wife's death for his two daughters, left his business and the residue of his estate to his two sons.

In case of the death of either or both of the daughters without issue, it was provided that her or their shares of the estate should become part of the residue thereof, and be divided equally among the survivors, and the issue of any child who should then be deceased. One of the daughters having died without leaving issue,

Held, that the use of the words, "survivors" and "child" in the clause in question excluded the idea that the share of the deceased daughter was to go to the two sons as part of the residue of the estate, and indicated an intention on the part of the testator that this particular part of the residue was to be divided equally among the surviving children of the testator and the issue of any deceased child; and that it was only subject to this disposition that all the rest and residue of the estate was to go to the two sons exclusively. *In re Estate of A. K. MacKintop*, 38/254.

32. Construction — Obvious intention — O. 55, r. 2.1—F. K., who left a widow and five children, by his last will, directed that his property should be sold in two years after his decease by his trustee, who, in the meantime, should pay the interest and rents to his wife and four of the children who were named. On the death of any one of the four children named, leaving a child or children, the share of such child was to be paid to the offspring. Whenever one of his children should die leaving children, the estate was to be divided equally among his children. Should his wife marry again, her share of the interest money was to be divided among his children, and after her decease, not having re-married, the interest of her share was to be paid to his son W., and on his death to be equally divided among his children.

Reading the will literally no share was given to the widow, beyond a share of the interest payable to her, until the estate came to be divided, but it was obvious that it was the intention of the testator that the widow should share equally with the four children named, and that, on her death unmarried, such share should go to his son W., and on his death be equally divided among his children.

Held, that the chambers judge, on application under O. 55, r. 2, was right in disregarding the literal reading of the will and in so construing it as to give effect to the obvious intention of the testator.

Held, also, that the learned judge was right in construing the direction made by testator in relation to the division of his property among his children, as referring to the four children named. *The Eastern Trust Co. v. Rose*, 38/546.

33. Construction — Abatement — Surplus.—A testator by certain clauses of his will devised and bequeathed property to some of his children, adding to each of these clauses a statement of the value of the property mentioned in the clause.

By another clause he devised certain land to his daughter, Margaret, subject to a payment of a legacy of \$200 to her daughter. He did not add to this clause a statement of the value of the land.

The will provided that in case of deficiency in the estate each legatee should be liable to