chattels and live stock now in his possession. After payment of all debts and funeral expenses, the rest of his cash and securities he gives to his executor: "And I authorise and request him to pay the interest in whole or in part to my son, and the principal in whole or in part as in the judgment of the executor may be prudent with reference to the habits and conduct of my son. My will and intention being that it shall be wholly in the discretion of my executor to pay the interest and principal in such amounts and at such times as he may think right, or to withhold the payment altogether."

The testator died in September, 1895: the son received various payments from the executor and died in November, 1910, leaving a will in which he assumed to dispose of the estate in the hands of the executor, amounting to about $15,000. The executor disclaims all interest beneficially, and asks to whom the fund shall be paid—under the will of the son, or to the next of kin of the testator as an undisposed of residue.

In Gude v. Worthington, 3 De G. & Sm. 389, the fund was set apart upon very much the same trusts as are found in this case, for the benefit of Mary Ann Seaman during her life, and should there be any of the fund at her death, undisposed of, upon trust for other persons. In this case there is no gift over and the trustee is living and the beneficiary is dead. In Gude v. Worthington the trustees were dead and the beneficiary was alive, and it was held by Knight Bruce, V.-C., that Mary Ann Seaman was absolutely entitled to the whole fund. It was contended that the discretionary power given by the will was at an end with the death of the trustees, being of a personal nature. The Court gave no reasons, but intimated that it was to be taken that the discretionary power had been waived, or had been declined to be exercised, and in either view the result was the same, *i.e.*, as I understand, that the primary intention of the testator was to benefit the person named, and that the death of the trustees without having disposed of the fund for her benefit was not to frustrate the manifest wish of the testator.

This decision has not been received with favour and has received various explanations, and it is certainly one that has gone to the verge of the law—particularly when the testator had made a gift over of the undisposed of residue. It has been spoken of by Stuart, V.-C., in Rowe v. Rowe, 21 L.J.N.S. 349, as a very remarkable decision and one which was not very elaborately argued.

Upon the language of this will it is plain that the testator gave no property in this fund to his son, but only a direction to