

in *Burnside v. Eaton*, ante 412, and *Dever v. Fairweather*, ante 389, and cases there cited. But, if the venue is changed to Chatham, there will be much less ground for such an application.

STREET, J.

OCTOBER 3RD, 1903.

TRIAL.

DALTON v. WILLIAMS.

Will—Construction—Effect of Codicil—Effect of Decrees in Former Suit—Annuities—Setting apart whole Estate to Answer—Gift over—Practical Revocation of Legacies—Payment of Arrears of Annuities—Interest—Reference—Costs.

Action by the present trustees under the will of Sophia Dalton, deceased, for the construction of her will dated 4th May, 1854, and a codicil to it dated in April, 1856. The testatrix died on the 14th June, 1859.

The will was as follows:—

“I wish all the property which I shall own at the time of my death to be converted into money at the discretion of my executors. . . . I hereby give, devise, and bequeath everything real and personal which I shall have at my death to my said executors and their heirs as joint tenants, and I desire them to pay thereout the following legacies: to my daughter Harriet, £500; to my daughter Mary, £500; to my son William, £400; to my son Robert, £400; to Henry Dalton . . . £200; to my son Thomas, £50; to my daughter Emma, £150; to my son William . . . £100 as trustee for his son Thomas. . . . And I give to my son Robert Gladstone Dalton £250 in order that he may invest it for the benefit of his sister Sophia for her separate use independent of and free from the control of her husband . . . during her lifetime, and at her death I desire the capital to go as she may by will . . . direct. And I give the further sum of £200 to my son Robert Gladstone Dalton in order that he may invest it for the benefit of Harriet Dalton, the wife of my son Thomas Dalton, for her separate use . . . that Robert may pay her the income therefrom . . . during her life, and at her death the capital shall go as she shall by her will . . . direct. And I direct that my executors shall invest the further sum of £1,000 for the benefit of my daughters Harriet and Mary equally, for their separate use, free from the control of their husbands should they marry, as follows: I desire it to be so invested as to produce an income which shall be paid equally to each of them