

Settlement on second marriage of wife—Issue by first marriage—
No issue of second marriage—Ultimate trust for next of kin,
as if settlor had died "without having been married."

In re Ellis, Wasbrough v. Boyce (1921) 1 Ch. 230. This was an appeal from the judgment of Sargant J. (1920) 2 Ch. 432. The case turns on the construction of a settlement made on the second marriage of a lady who had divorced her first husband by whom she had one son who survived her. The settlement was in trust after the death of herself and her then intended husband for the issue of the marriage, and in default of issue and in case of her predeceasing her husband in trust for such persons as would be entitled at her death "had she died possessed thereof intestate and without ever having been married." There was no issue of the second marriage and the settlor predeceased her second husband intestate. It was argued that the words "without ever having been married" were to be construed as referring only to the second marriage then in contemplation and that the son of the first marriage was therefor entitled under the ultimate trust, and Younger L.J. so held but Sargant J. held that the words must have their literal meaning and consequently excluded issue of the wife, and with this view the majority of the Court of Appeal (Lord Sterndale M.R. and Warrington L.J.) concurred.