

annuities and legacies, to divide all the residue of his estate into seven equal shares and to give half of a share to each of his sons William, James, George, Henry, Alfred, Robert, and Horace, if such son had attained or as such son should attain the age of 25 years, and the other half of a share to each such son as had attained or as such son should attain the age of 35 years; he also disposed of the incomes to be derived from the respective shares pending the payment over of the corpus; and then he said:—

“And if any of my said sons shall die under the respective ages of 25 or 35 years unmarried and without issue living at his death then the half share or shares to which such son had not then become entitled in possession and the interest accrued thereon shall be divided equally among his said brothers him surviving. The children of any son who may die in my life shall stand in the place of their father.”

And, by a codicil expressed to be executed at the same time and place and before the same witnesses as the will, he said:—

“In the event of any of my sons being married and dying without issue I direct that my trustees shall pay out of my residuary estate to the wife of such son \$1,000 per annum for her life.”

The testator died in 1881. His son Henry acted as one of the trustees of the will until his death in 1916; and he duly received his share of the residuary estate. He left a widow but no children him surviving. The widow now sought a declaration that the effect of the codicil was to entitle her to an annuity of \$1,000 for life.

The time at which the direction to pay contained in the codicil was to become operative was clearly some time earlier than the time at which, according to the will, the distribution of the residue was to be completed. Looking at the will, it was plainly to be seen what that time was. The codicil should be read as a direction to the trustees to pay an annuity to the widow of any son who died in the lifetime of the testator or under the age of 25 or under the age of 35, leaving no issue him surviving. By this reading all apparent inconsistencies were removed, and effect was given to the testator's real intention.

It was argued for the applicant that, the codicil being the later expression of the testator's wishes, effect must be given to its provisions. That would be so if the will and the codicil could not be reconciled; but, where there is no irreconcilable conflict between the two provisions, but only an apparent inconsistency, the rule invoked has no application: see Halsbury's Laws of England, vol. 28, p. 677.

And, if due regard is paid to the words “out of my residuary estate,” used in the codicil, there is not even an apparent incon-