Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Trew v. *The Perpetual Trustee Company, Limited, and others, from the Supreme Court of New South Wales; delivered 23rd February* 1895.

Present:

THE LORD CHANCELLOR.
LORD WATSON.
LORD HOBHOUSE.
LORD MACNAGHTEN.
LORD SHAND.
LORD DAVEY.
SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

This is a suit for the administration of the estate of Louis Samuel, who died on the 29th November 1887, having made a will on the day of his death. The Appellant, now Mrs. Trew, was his wife. The Respondents are, his two children and a Company appointed to be trustees of his will. The matter in question is the amount of interest given by the will to the Appellant.

The testator first gave his whole estate to trustees upon trust to sell and convert it into money. It will conduce to clearness if his directions as to the application of the money, which in the will are written consecutively, are now quoted as separate clauses.

"(*a*) To pay the income of so much thereof
" as shall amount to the sum of 20,000*l.*
" to my wife Mary Ruth Samuel during

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" her life and so long as she shall " remain my widow for her sole and " separate use free from the control " of any husband."

" (*b*) And from and immediately after her " marrying again in trust to pay the " income arising from 10,000*l*. to my " said wife for her life free from the " control of any future husband as " aforesaid."

" (*c*) And from and immediately after the " death of my said wife to pay the " income arising from the said " 20,000*l*. for the maintenance and " education and advancement of all " or any children of mine by my said " wife whether born or to be born " hereafter."

" (*d*) And in the event of my said wife " marrying again to apply the interest " of the balance of the 20,000*l*. upon " the trusts last herein-before de- " clared."

" (*e*) And I further declare that the trustees " shall subject to the aforesaid trusts " pay to each of my said children upon " their attaining the age of 21 years, or " upon their or either of their marriage " one half of the capital sum herein- " before devised upon trust."

" (*f*) As to the residue of my said estate," he gives 10,000*l*. to his brother Edward.

" (*g*) And as to all my residuary estate I give " and bequeath the same upon the " trusts hereinbefore declared with " reference to the sum of 20,000*l*."

The ultimate residue was large. It is stated by the Appellant to amount to 34,000*l*. or thereabouts. Her contention is that by virtue of clause (*g*) she is entitled for life to the income,

either of the whole residuary estate, or at leas of an additional sum of 10,000*l*. For the children it is contended that on her second marriage she became entitled to no more than the income of one sum of 10,000*l*.

The cause was heard before the Chief Judge in Equity, who declared that the Appellant is entitled, in the events which have happened, to the income arising from 10,000*l*., part of the estate of the said testator, during her life, and is not entitled to any further interest under the said will.

She appealed to the Full Court, who dismissed the appeal, Mr. Justice Manning dissenting from his colleagues. She now seeks to reverse those adverse decrees.

It has hardly been contended here that the lady is entitled to the first alternative of her claim, viz. the moiety of the whole residue; but it is urged strongly that she is entitled to a second sum of 10,000*l*. for her life. Their Lordships pass over the conjectures made as to the intentions of the testator not expressed in words. The will shows marks of hasty construction; but it is consistent enough with itself, and upon the point in question its literal construction presents no great difficulty.

Upon the literal construction the argument pressed in favour of the Appellant is, to use the words of Mr. Justice Manning, that where there is a trust by reference "the only safe course to "adopt, is to re-write the words declaring such "trust, merely substituting the second fund or "property for the first." Then it is said that if the words "residue of my estate" be written in where the words "20,000*l*." occur, that will carry to the widow the income of the sum of 10,000*l*. on her re-marriage.

But in the first place their Lordships cannot accept the proposed canon of construction in any

sense which would give to it the general effect of multiplying charges upon the trust estate, or trusts in the nature of charges. Of course such may be the intention or effect of a particular will. But in the absence of anything in the will to show such an intention, the rule is that the Court will not impute it to the testator. In the case of *Hindle* v. *Taylor* (5 De G. M. and G. 577) Lord Cranworth held that in almost all cases it is not a reasonable way of reading a trust created by reference to other trusts, to consider everything as there repeated, and so to make a duplication, as it were, of trusts in the nature of charges. This opinion has been recognized as sound in subsequent cases. That in this case the widow's interest after re-marriage is in the nature of a charge hardly admits of dispute.

In the second place, even supposing the suggested process were applied to this will, their Lordships cannot see how the Appellant makes out her right to a second sum of 10,000*l*. Let the residue be substituted for 20,000*l*. as suggested, Clause (*a*) would then carry the income of the residue to the widow, but only pending widowhood. Clause (*b*) does not relate to the 20,000*l*. but to a substituted sum of 10,000*l*. Clause (*c*) would give the income of the residue to the children at the death of the widow. Clause (*d*) would give the income of the balance of the residue to the children after the marriage of the widow. Clause (*e*) would give them at 21 or marriage one half of the capital of the residue. It is one of the inaccuracies of the will that there is no express gift of the other half. It has probably been assumed by everybody that the gift of the whole income and an accelerated gift of half the capital implied that the whole capital was intended to be given ultimately. In all these prior provisions there is no gift to the widow after re-marriage, except in Clause (*b*),

and that is not expressed to be one of the trusts of the 20,000*l*. There is no trust declared of "the 20,000*l*." as a whole in favour of the widow after her second marriage. For the Appellant it is contended that such a trust is implied in Clause (*d*) by the expression "the balance of the "20,000*l*." No doubt the widow's 10,000*l*. would have to be answered out of the 20,000*l*., or out of the bulk of the estate before any residue could be ascertained. Her interest is made to come first; and "the balance of the 20,000*l*." means that part as to which no direction was given after the direction regarding the 10,000*l*. But it seems somewhat fanciful to say that the introduction of Clause (*d*) into the residuary gift would amount to a direction that another sum of 10,000*l*. is to be taken out of the residue, and added to that which is alone given to the widow by Clause (*b*) on her re-marriage.

This is what their Lordships find to be the result of actual introduction of the prior clauses into the residuary gift. If on the whole will there were any sufficient indication of an intention that the widow should on re-marriage take two sums of 10,000*l*. effect could doubtless be given to it, though it might not be expressed in precise terms. But, as above observed, there is no such indication; the Appellant is relying on the strictest literal construction, and that is found not to be in her favour.

The result is that the judgment below ought to be affirmed and the appeal dismissed. The Courts below have thought fit to charge upon the estate the costs of the two former hearings. But it would hardly be right to burden the estate with the costs of a second fruitless appeal, and their Lordships must order the Appellant to pay the costs. They will humbly advise Her Majesty accordingly.