[HOUSE OF LORDS.]

PERRIN AND OTHERS . . . . . APPELLANTS ; H. L. (E.)*

AND 1942

MORGAN AND OTHERS . . . . . RESPONDENTS. *Nov.* 3, 4, 5 ; 1943 *Jan.* 25.

Will—Construction—Gift—"All moneys of which I die possessed"—Meaning of "money."

Appeal—House of Lords—Benefit of successful appeal enuring to persons not appellants.

A testatrix, by her will drawn without legal assistance, directed that "all moneys of which I die possessed of shall be shared by "my nephews and nieces now living." Her estate consisted of investments valued at 32,783*l.*; cash at bankers amounting to 689*l.*; dividends received or accrued, 36*l.*; rents due prior to her death, 82*l.*; income tax repayment due to her, 32*l.*; household goods valued at 62*l.*; freeholds specifically bequeathed valued at 1445*l.*; and freeholds not mentioned in the will valued at 340*l.*:—

Held, that the bequest included all the net personalty.

In interpreting a will the court is not bound in the absence of special circumstances to adopt a fixed meaning of the word "money" as being its "legal" as opposed to its "popular" meaning, but must ascertain as between various usual meanings which is the correct interpretation of the particular document in the light of the context and other relevant circumstances.

Per Lord Russell of Killowen. The meaning of the word "money" in a will is not restricted by any hard and fast rule but depends on the context in which it occurs, properly construed in the light of all relevant facts, and, given such a sufficient context, it may include more than what is called "money in the strict "sense."

Per Lord Romer. The rules of construction should be regarded as a dictionary by which all parties, including the court, are bound, but the court should not have recourse to it to construe a word or a phrase until it has ascertained from the language of the whole will read in the light of the circumstances whether or not the testator has indicated his intention of using the word or phrase otherwise than in its dictionary meaning.

Observations on the effect of a successful appeal enuring to the benefit of persons who were not appellants.

Decision of Court of Appeal (sub nom. *In re Morgan. Morgan* v. *Morgan*) [1942] Ch. 345 reversed.

APPEAL from the Court of Appeal.

The facts, stated by VISCOUNT SIMON L.C. and LORD ROMER, were as follows: The will of the testatrix was typed on a form

* *Present:* VISCOUNT SIMON L.C., LORD ATKIN, LORD THANKERTON, LORD RUSSELL OF KILLOWEN, and LORD ROMER.

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supplied by law stationers, and was not made with professional aid or skill. Its terms were as follows: "This is the last will "and testament of me Emily Rose Morgan of New Farm "King's Somborne in the county of Southampton spinster. "I give devise and bequeath to my nephew Leonard Morgan "the six cottages called 'Vicarage Terrace' King's Somborne "and to my nephew Charles Burnett Morgan the eight cottages "in Nutcher's Drove King's Somborne and also the two "thatched cottages with pasture called 'Knowlton.' I "direct that all moneys of which I die possessed of [sic] shall "be shared by my nephews and nieces now living, namely: "Leonard Morgan, Charles Burnett Morgan, Laura B. Avery, "Charles Robert Morgan, Christina J. A. Jeggo, Enid E. "Perrin, Percy E. Morgan, Olive L. E. Morgan, Robert G. "Morgan, Ida W. Allan, Ciscilia Morgan, Leslie Gilbert "Morgan, Lilian E. Morgan, Ellen Treble. I give to my "sister Julia Palmer if alive at my decease the legacy or sum "of five hundred pounds. I appoint my nephew Charles "Burnett Morgan as executor of this my will. And I revoke "all former wills. In witness whereof I have hereunto "subscribed my name this 27th day of September One thousand "nine hundred and thirty-five. EMILY ROSE MORGAN." The testatrix died on October 14, 1939. At the date of her will she had two sisters living, Julia Palmer and Henrietta Reeves, and fifteen nephews and nieces. Only one sister, Henrietta Reeves, besides thirteen nephews and nieces, survived her. The testatrix's estate consisted of personalty in the shape of investments (stocks or funds of the United Kingdom and of the Dominions, securities of municipal corporations and stocks and shares and debentures of companies) valued at a total of 32,783*l.* 5*s.* 3*d.*; cash at bankers amounting to 689*l.* 12*s.* 3*d.*; dividends received or accrued, 36*l.*; rents due prior to her death, 82*l.* 17*s.* 9*d.*; income tax repayment which was due to her, 32*l.* 4*s.*; and household goods, etc., valued at 62*l.* The total of her personal property was, therefore, 33,685*l.* 19*s.* 3*d.* In addition, the testatrix died possessed of real estate, namely, freeholds at King's Somborne valued at 1445*l.*, and a freehold at Michelmersh worth 340*l.* The freeholds at King's Somborne were the subject of specific devises, but the freehold at Michelmersh was not mentioned in the will. Farwell J. decided, on an originating summons—(*a*) that the shares given to a nephew and niece who predeceased the testatrix passed as on an

intestacy, and "(*b*) that the bequest of all moneys of which "the testatrix died possessed included dividends and interest "received or accrued due to the date of her death, cash at her "bankers, rents due to the date of her death, the proportion "of the rents to the date of her death in respect of property "devised to her for life . . . . and any sums recovered by "way of repayment of income tax, and did not include any "other items of her estate." The appellants, eight nephews and nieces, having appealed, the Court of Appeal affirmed this decision. The appellants appealed to the House of Lords.

Beebee for the appellants. The phrase "all moneys of "which I die possessed" included the whole personal estate of the testatrix. If a will is drawn by a lawyer, it is proper to adopt the so-called strict legal meaning of the word "money," according to the rule deriving from *Shelmer's Case* (1), which includes only cash or currency in a testator's possession or due to him (e.g., choses in action, such as sums on current or deposit account at a bank, but not investments): see *Lowe* v. *Thomas* (2); *In re Taylor. Taylor* v. *Tweedie* (3); and Hawkins on Wills, 3rd ed., pp. 61, 62; but, in the case of the will of a layman who was inops consilii, "money" must be given its popular meaning which includes all personal estate: *Forth* v. *Chapman* (4). To find the sense in which the word is used in a particular will it is necessary to look at the circumstances and the context, but, if there must be a fixed rule of construction, it should be that "money" in a will drawn by a layman should have its widest signification, save in so far as the context requires it to be construed in some more restricted sense. As a universal test the so-called rule as to the meaning of "money" "in the strict sense" is quite inappropriate. A layman who has not consulted the legal dictionaries cannot have heard of it, for it is not to be found in any non-legal dictionary: see, e.g., Oxford English Dictionary. Under the rule the courts have attached an esoteric meaning to the word "money," which imposes an arbitrary technical meaning on the language of lay persons making their own wills and almost invariably operates to defeat their manifest intentions, thereby creating an intestacy. Its effect may be to deprive the judge of the right to use his common sense as in *Byrom* v.

(1) (1725) Gilb. 200.
(2) (1854) Kay, 369.
(3) [1923] 1 Ch. 99.
(4) (1720) 1 P. Wms. 663, 666.

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Brandreth (1); *In re Gates. Gates* v. *Cabell* (2); and *In re Hodgson. Nowell* v. *Flannery* (3). The rule runs counter to the modern tendency to ascertain the intentions of a testator from the language of the will read in the light of all admissible circumstances without undue regard to previous decisions on more or less similar language in other wills made at other times and in other circumstances. It is also contrary to the recognized leaning of courts of construction against a construction which involves an intestacy. The appellants rely on *Prichard* v. *Prichard* (4); *In re Cadogan. Cadogan* v. *Palagi* (5); and *In re Jennings. Caldbeck* v. *Stafford* (6). In the present case everything goes to indicate that "money" includes all the personal estate of the testatrix. There is no residuary gift. The effect of holding otherwise would be to create an intestacy to the extent of 32,000*l.* out of 33,000*l.*, and it would be unreasonable to attribute to the testatrix this deliberate intention.

Danckwerts for the executor and the other legatees. The rule requiring a gift of money in a will primarily to be construed strictly as including only cash, currency and sums on account at a bank is not binding on this House. There is no presumption as to the meaning of "money," which must be deduced from its context and the circumstances. If there be a presumption, it should be that the expression covers prima facie the whole estate, including, if necessary, land: see *Chapman* v. *Reynolds* (7). On the context of this will and in the circumstances "money" covers the residuary personal estate, but as the testatrix has attempted to deal with her real estate separately that is not included.

Hewins for the next of kin. The established rule is that in a will the word "money" or "moneys" must be construed as meaning cash, i.e., currency in the testator's possession, sums to his credit at a bank on current or deposit account, and any other sums of which he was entitled at the time of his death to demand immediate payment. That is the proper construction in the absence of any context or admissible circumstances indicating that the word has been used in a more extended sense. A very slight context is sufficient to extend the meaning, and the context may justify the inclusion

(1) (1873) L. R. 16 Eq. 475.
(2) [1929] 2 Ch. 420.
(3) [1936] Ch. 203.
(4) (1870) L. R. 11 Eq. 232.
(5) (1883) 25 Ch. D. 154.
(6) [1930] I. R. 196.
(7) (1860) 28 Beav. 221.

of the whole of the personal estate, but in the absence of any context "money" should be construed in the strict legal sense: *Shelmer's Case* (1); *Hotham* v. *Sutton* (2); *Gosden* v. *Dotterill* (3); *Lowe* v. *Thomas* (4); *Glendening* v. *Glendening* (5); *Ogle* v. *Knipe* (6); *Collins* v. *Collins* (7); *Byrom* v. *Brandreth* (8); *Manning* v. *Purcell* (9); *In re Taylor* (10); *In re Gates* (11); *In re Putner. Putner* v. *Brooke* (12); *In re Collings. Jones* v. *Collings* (13); and Hawkins on Wills, 3rd ed., p. 67. Other decisions do not invalidate the rule. *Lynn* v. *Kerridge* (14) stands by itself outside the line of the authorities. *In re Cadogan* (15) can be supported within the scope of the rule. *In re Jennings* (16) is not really a departure from the rule, but it expresses it in different terms. There has been no change in modern circumstances to justify its reversal. In the Court of Appeal Lord Greene M.R. (17) suggested that the number of small investors was greater now than when the rule was formulated, but there were always members of the public whose testamentary dispositions might be defeated by the rule, and, accordingly, there is no real change of circumstances. Moreover, few testators bequeath "my money" without any context at all. As for the humbler class of testators, they rarely leave their property by general description, but usually dispose of it specifically. The rule has drawn the line so as to exclude stocks and shares from the term "money." Everyone realizes that there is an actual distinction between money on credit at a bank and investments, and this is founded on reality. Money at the bank can be put in a man's pocket simply by writing a cheque, whereas he must find a buyer for stocks and shares. Further, in the case of money at the bank he will get a precise amount of pounds, shillings and pence, while in the case of investments (save as regards debentures) the proceeds of a sale will vary from time to time. If the strict legal meaning of "money" is to be changed it is hard to see where one should stop. If prima facie it is to be taken

(1) Gilb. 200.
(2) (1808) 15 Ves. 319.
(3) (1832) 1 My. & K. 56.
(4) Kay, 369.
(5) (1846) 9 Beav. 324.
(6) (1869) L. R. 8 Eq. 434.
(7) (1871) L. R. 12 Eq. 455.
(8) (1873) L. R. 16 Eq. 275.
(9) (1855) 7 De G. M. & G. 55.
(10) [1923] 1 Ch. 99, 108.
(11) [1929] 2 Ch. 420.
(12) (1929) 45 T. L. R. 325.
(13) [1933] Ch. 920.
(14) (1737) West temp. Hard. 172.
(15) 25 Ch. D. 154.
(16) [1930] I. R. 196.
(17) [1942] Ch. 345, 347.

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to include the whole personal estate, that, in the absence of context or circumstances, is merely to speculate. It should be borne in mind that while such ambiguities only occur in the case of a will not drawn by a professional person, the fact that it is a home-made will is one of the circumstances to be taken into consideration in construing it. In the will in the present case there is no sufficient context to extend the meaning of "moneys" beyond its strict primary meaning. Although the document was "home made" it was not composed by the testatrix without the opportunity of consulting some precedent, as witness the attestation clause and the words "I give devise and bequeath." It was not made in articulo mortis, but four years before the death of the testatrix. At that time she may have had no investments. There is no evidence as to that. She may have intended to dispose of her investments subsequently by codicil or she may have intended the bulk of her property to pass in accordance with the Administration of Estates Act, 1925. It is clear that she did not intend to dispose of all her property, for she left some of her freeholds undisposed of and also her furniture, which could not, in any event, be regarded as "moneys." Further, had she meant "money" to cover her investments the result would have been that there was not sufficient to meet the legacy to her sister which was beyond the value of the undisposed of realty. Finally, the expression "all moneys of which I "die possessed" suggests, not something comparatively static like investments, but something which might fluctuate between the date of her will and her death, like a bank balance.

Beebee in reply. As there is no strict residuary clause in this will it is probable that the gift in general form was intended as a residuary gift. The absence of any context is a reason for giving a wide meaning to the word "moneys" which, in the case of a layman's will, should cover all property unless there is a context to cut down this construction. The existing rule, though of long standing, does not depend on the construction of any statute or on the common law, and if it is overruled now no title or contract will be shaken and no general course of dealing altered, whereas much practical injustice to testators, particularly of the humbler class, will be prevented: see *Bourne* v. *Keane* (1).

The House took time for consideration.

(1) [1919] A. C. 815, 874.

Jan. 25. VISCOUNT SIMON L.C. My Lords, this appeal raises the interesting and important question whether, when the word "money" appears in an English will as the description of that of which the testator is disposing, the word, in the absence of any context or other circumstances proper to be considered as varying its meaning, must be interpreted according to an alleged fixed "rule of construction" which has been regarded by our courts as established and binding for many generations past, and which is said to be traced back to a pronouncement of Gilbert C.B. in 1725: *Shelmer's Case* (1).

The will in the present case was typed on a form supplied by law stationers, and the phrasing of it, as the Master of the Rolls pointed out, goes clearly to show that it was not made with professional aid or skill. Indeed, this is admitted. On the view of Farwell J., the nephews and nieces named in the will do not share in any of the investments, and out of personal property of the aggregate value of 33,685*l.* 19*s.* 3*d.*, what under the will falls to be shared between them is about 840*l.* The testatrix would thus be taken to have died intestate as to the whole of the rest of her personal estate. The Court of Appeal, with manifest reluctance, felt constrained to confirm this view. Indeed, that court could take no other course than follow and apply the rule of construction by which, owing to previous decisions of courts of co-ordinate jurisdiction, it was bound. Lord Greene M.R. defined the rule thus (2): "The rule is, and it has been laid down on many "occasions, that the word 'money' in a will must be "construed in what is called its strict sense, unless there is "a context which permits of an extended meaning being "given to it. The strict sense of 'money,' curiously enough, "—and this is one of the anomalies about this rule—is a "sense which has been invented by the courts, and invented, "I think, partly in order to get rid of the rigours of the rule "which would have existed if the word 'money' had been "confined to actual cash—which, no doubt, was the original "meaning. That was felt by the courts to be going too "far, so they have invented a special category which they "have called 'money in the strict sense,' which includes "money not in any strict sense, because it includes choses "in action, such as moneys on drawing account at a bank. "But that category is closed, and we cannot extend the "language unless there is a context permitting such a course.

(1) Gilb. 200. (2) [1942] Ch. 345, 346.

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"In the present case I am afraid that I cannot find such a "context." Lord Greene M.R., in his judgment (1), called attention to the remarkable fact that, in applying this rule in previous cases, judges have many times observed that they believed themselves to be defeating the intention of the testator. Lord Greene M.R. allowed himself to use the strong expression (1) that the rule "is a blot upon our juris-"prudence," but he pointed out that, as far as the authorities go, it was open to the House of Lords to reconsider the whole matter. The majority of your Lordships are, as I understand, prepared not only to interpret the language of the present will, but to pronounce on the much larger matter of the rule itself, and I proceed to deal with this general question.

My Lords, the fundamental rule in construing the language of a will is to put on the words used the meaning which, having regard to the terms of the will, the testator intended. The question is not, of course, what the testator meant to do when he made his will, but what the written words he uses mean in the particular case—what are the "expressed "intentions" of the testator. In the case of an ordinary English word like "money," which is not always employed in the same sense, I can see no possible justification for fixing on it, as the result of a series of judicial decisions about a series of different wills, a cast-iron meaning which must not be departed from unless special circumstances exist, with the result that this special meaning must be presumed to be the meaning of every testator in every case unless the contrary is shown. I agree, of course, that, if a word has only one natural meaning, it is right to attribute that meaning to the word when used in a will unless the context or other circumstances which may be properly considered show that an unusual meaning is intended, but the word "money" has not got one natural or usual meaning. It has several meanings, each of which in appropriate circumstances may be regarded as natural. In its original sense, which is also its narrowest sense, the word means "coin." Moneta was an appellation of Juno, and the Temple of Moneta at Rome was the mint. Phrases like "false money" or "clipped money" show the original use in English, but the conception very quickly broadens into the equivalent of "cash" of any sort. The question: "Have you any money in your purse?" refers presumably to bank notes or Treasury notes, as well as to

(1) [1942] Ch. 345, 346.

shillings and pence. A further extension would include not only coin and currency in the possession of an individual, but debts owing to him, and cheques which he could pay into his banking account, or postal orders, or the like. Again, going further, it is a matter of common speech to refer to one's "money at the bank," although in a stricter sense the bank is not holding one's own money and what one possesses is a chose in action which represents the right to require the bank to pay out sums held at the call of its customer. Sums on deposit, whether with a bank or otherwise, may be included by a further extension, but this is by no means the limit to the senses in which the word "money" is frequently and quite naturally used in English speech. The statement: "I have my money invested on mortgage, or in debentures, or "in stocks and shares, or in savings certificates," is not an illegitimate use of the word "money" on which the courts are bound to frown, though it is a great extension from its original meaning to interpret it as covering securities, and, in considering the various meanings of the word "money" in common speech, one must go even further, as any dictionary will show. The word may be used to cover the whole of an individual's personal property—sometimes, indeed, all of a person's property, whether real or personal. "What has "he done with his money?" may well be an inquiry as to the general contents of a rich man's will. Horace's satire at the expense of the fortune-hunter who attached himself to childless Roman matrons, has its modern equivalent in the saying: "It's her money he's after." When St. Paul wrote to Timothy that the love of money is the root of all evil, he was not warning him of the risks attaching to one particular kind of wealth, but was pointing to the dangers of avarice in general. When Tennyson's Northern Farmer counselled his son not to marry for money, but to go where money is, he was not excluding the attractiveness of private property in land. These wider meanings of "money" are referred to in some of the reported cases as "popular" meanings, in contrast to the "legal" meaning of the term, but for the purpose of construing a will, and especially a home-made will, a popular meaning may be the more important of the two. The circumstance that a skilled draftsman would avoid the use of so ambiguous a word only confirms the view that, when it is used in a will, the popular as opposed to the technical use of the word "money" may be important. I protest against the idea that, in

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interpreting the language of a will, there can be some fixed meaning of the word " money," which the courts must adopt as being the " legal " meaning as opposed to the " popular " meaning. The proper meaning is the correct meaning in the case of the particular will, and there is no necessary opposition between that meaning and the popular meaning. The duty of the court, in the case of an ordinary English word which has several quite usual meanings which differ from one another is not to assume that one out of several meanings holds the field as the correct meaning until it is ousted by some other meaning regarded as " non-legal," but to ascertain without prejudice as between various usual meanings which is the correct interpretation of the particular document.

I now turn to some of the reported cases, premising only that it seems to me a little unfortunate that so many of such cases should find their way into the books, for in most instances, the duty of a judge who is called on to interpret a will containing ordinary English words is not to regard previous decisions as constituting a sort of legal dictionary to be consulted and remorselessly applied whatever the testator may have intended, but to construe the particular document so as to arrive at the testator's real meaning according to its actual language and circumstances. It can rarely happen, I should suppose, that the interpretation of a word like " money " in one will provides a sure and certain guide to its meaning in another will, which is differently expressed. In *Abbott* v. *Middleton* (1), a decision of this House in which Lord Chelmsford L.C., Lord Cranworth, Lord St. Leonards, and Lord Wensleydale all took occasion to expound the governing rule as to the interpretation of wills, Lord Wensleydale observed : " A great many cases were cited "at the bar, as they always are, when the question is on the "construction of wills. Generally speaking, these citations "are of little use. We are no doubt bound by decided cases, "but when the decision is not upon some rule or principle of "law, but upon the meaning of words in instruments which "differ so much from each other by the context, and the "peculiar circumstance of each case, it seldom happens that "the words of one instrument are a safe guide in the construc- "tion of another."

The decision reported as " *The Case of Mary Shelmer's "Will"* (2), is (like some other entries in the volume) not a judicial decision, but arose out of a case submitted to

(1) (1858) 7 H. L. C. 68, 119. (2) Gilb. 200.

Gilbert C.B., and is an award signed by him. It is to be noted that the reporter (who, as the preface to the volume indicates, was none other than the Chief Baron himself) inserts a query in the margin (1) as to whether the award " is final "or good in law." Gilbert C.B. was asked in 1725 to decide as between relatives and servants of the testatrix as to the proper interpretation of the gift to two servants of " all my "household goods, money and plate, that I shall leave behind "me at the time of my death undisposed of, and not bequeathed "to others." The learned arbitrator observed (2) that the word " money " in our language " is a genus that comprehends "two species, namely, ready money and money due, that is "to say, the money in her own hands, or her money in the "hands of any body else; and therefore in this case the "bequests to her servants will comprehend Mr. Wood's "mortgage, and the arrears of rent, since these must be looked "upon by all the rules of construction to be Mrs. Shelmer's "money at the time of her death; but the word money will "not comprehend South-Sea stock or annuity stock, because "that is an interest arising out of funds, settled by publick "laws; and though it be redeemable by money, or saleable "for money, yet it can be no more looked upon as money at "the time of Mrs. Shelmer's decease than a term of years, a "coach and horses, or any other real or personal chattel "whatsoever can." There is no specific reference in the report to " Mr. Wood's mortgage," and I am inclined to think, in view of an earlier passage, that the reference must be to interest due to the testatrix on the mortgage when she died. It appears to me that Gilbert C.B., in making this award, did not regard himself as laying down a definition for use in subsequent cases, but was addressing himself solely to the meaning of the rather complicated document which was then before him.

Be that as it may, there is no doubt that in course of time the rule to which Lord Greene M.R. refers took shape and was increasingly regarded in the Court of Chancery as a mandatory rule of construction. Even where a decision as to the meaning of the word " money " was really arrived at by examining the terms of a particular will, there has been a tendency to quote the decision as establishing the proper interpretation for future cases, and that, notwithstanding that the interpretation adopted was felt not to give to the word " money " the meaning

(1) Gilb. 200, 203. (2) Ibid. 202.

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intended by the testator. Thus, in *Hotham* v. *Sutton* (1), Lord Eldon L.C., sitting in the Court of Chancery, began his judgment by saying (2): "It is very probable that this "testatrix, if she was here, might decide both the questions, "that have been made, differently from what must, I think, be "the decision of them," and one of the decisions was that "money" in the codicil then being considered did not include "stock." In *Gosden* v. *Dotterill* (3) a testator, after giving some pecuniary legacies, directed that "the rest of my money "be equally divided, share and share alike, between A and B." Leach M.R. said (4) that he had "no doubt that it was the "intention of this testator that the stock" [it was some 600*l.* in consols] "should pass under the term 'money,'" but, after delaying his decision in order to examine the authorities, he decided (5) "that the term 'money' will not pass stock unless "there is in the will some explanatory context, and here is no "explanatory context." In *Lowe* v. *Thomas* (6), Page Wood V.-C., after referring to *Hotham* v. *Sutton* (1) and *Gosden* v. *Dotterill* (3) as being decisions that he was bound to follow, held that a bequest of "the whole of my money" to X for his life, and at his death to be divided between Y and Z, could only avail to pass some 60*l.* of cash, and did not cover a considerable sum of stock in the funds. The Vice-Chancellor, at the end of his judgment, observes: "It is painful to be "obliged to come to the conclusion to which I have come upon "the construction of this will; because I should have had "strongly the impression, that, in ordinary parlance, the "word 'money' as here used, might have included the stock "in question, if I were not compelled by authority to hold "otherwise." The Vice-Chancellor's decision was upheld on appeal (7).

There were other decisions in which, having regard to the language and framework of the will, a wider interpretation was adopted. For example, in *Prichard* v. *Prichard* (8) Malins V.-C. began his judgment by saying: "The object must "be to ascertain the intention of the testator. The word "'money' will, in many instances, mean that money which "a testator has in his house, or at his bankers at call; and "if a man gives his ready money, or money as distinguished

(1) 15 Ves. 319.
(2) Ibid. 326.
(3) 1 My. & K. 56.
(4) Ibid. 59.
(5) Ibid. 60.
(6) Kay, 369, 378.
(7) (1854) 5 De G. M. & G. 315.
(8) L. R. 11 Eq. 232, 234.

"from other property, the court will see what was intended to "pass, as in *Manning* v. *Purcell* (1). So in this case, if the "testator, after the gifts of money, had added a residuary "clause, I should have said, What portion of his property "did he mean when he used the term 'money'? but he "makes one universal gift, without distinction, and he must "either have intended to die intestate or he intended by the "word 'money' to describe all his property." The Vice-Chancellor held that, on the language of that will, the wider interpretation was correct. Similarly, in *In re Cadogan. Cadogan* v. *Palagi* (2) Kay J. said: "I feel compelled to hold "that the lady used the word 'money' in this will in the "popular sense as a description of all her personal estate, "and I do not think that any of the cases have laid down a "rule which prevents that construction." The extent, however, to which the earlier authorities were regarded as establishing the presumption of a more restricted meaning may be well illustrated from the language of Lord Selborne L.C., when sitting for the Master of the Rolls in *Byrom* v. *Brandreth* (3). Lord Selborne's language is as follows: "I "wish very much that I could accede to the argument of "Mr. Rigby, because I cannot resist the impression that "probably that which this testatrix intended is what he "suggests. If the authorities had not required that the "word 'money' should be strictly construed, I am by no "means certain that it would not be more in accordance "with the ordinary and popular use of the word to hold it, "when used in this way in a testamentary instrument, to "be significant of all that we call personal or movable "property, which, as a general rule, unless there be particular "directions to the contrary, is subject to conversion after "death. But though this is one of the instances in which "the necessity of adhering to strict principles of construction "renders it doubtful whether those principles may not more "frequently contradict than give effect to the intention, yet, "looking to the principle by which I am bound, I am com-"pelled to hold that the word 'money' cannot be extended "to such an interest as the legacy in question." The testamentary gift which Lord Selborne was engaged in construing was a gift of "any money of which I may die "possessed." The Court of Appeal in *In re Taylor. Taylor* v.

(1) (1854) 2 Sm. & G. 284; 7 De G. M. & G. 55.
(2) 25 Ch. D. 154, 157.
(3) L. R. 16 Eq. 475, 478.

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Tweedie (1) found a context in the will before it which justified it in treating a bequest of " the money I have and am entitled "to now and at any future time" as including invested capital. The judgments in that case, however, show that the lords justices felt bound by earlier authority to draw a contrast between the "popular" and the " legal" sense of the word " money." Younger L.J., for example, observes (2): " This "popular interpretation cannot, however, in the absence of a "context, be placed upon the word ' money ' when used in a "will, although the court will, to aid that interpretation, so "far at least as personal estate is concerned, fasten upon even "a slight context when it can find one." In the absence of context to tip the balance, the modern decisions all come down on the side against the " popular " sense: see, for striking examples, *In re Gates. Gates* v. *Cabell* (3), and *In re Hodgson. Nowell* v. *Flannery* (4).

Notwithstanding this long tradition I would urge the House to reject the view that, in construing a will, the court must start with a presumption in favour of a particular narrower meaning of the word " money " (though not, indeed, its narrowest meaning), and that, in the absence of contradictory context, the court is bound to apply this narrower meaning, even though the inference is that this is not what the testator really meant by the term. As I have already said, the word "money " has more than one meaning, and it is, in my opinion, a mistake to pick out one interpretation of the word and to call it the " legal " meaning or the " strict legal " meaning as though it had some superior right to prevail over another equally usual and not illegitimate meaning. The context in which the word is used is, of course, a main guide to its interpretation, but it is one thing to say that the word must be treated as having one particular meaning unless the context overrules that interpretation in favour of another and another thing to say that " money," since it is a word of several possible meanings, must be construed in a will in accordance with what appears to be its meaning in that document without any presumption that it bears one meaning rather than another. While disclaiming any idea of interpreting a document which is not before me, I should have thought that the mere fact that a will in a single sentence disposed of " all the money "of which I die possessed " was a reason for interpreting

(1) [1923] 1 Ch. 99.
(2) Ibid. 110.
(3) [1929] 2 Ch. 420.
(4) [1936] Ch. 203.

"money" in a very wide sense, though there is no positive context.

In choosing between "popular" meanings, it seems to me that an interpretation which includes realty as well as personalty in the word "money" may often be going too far, though, of course, everything turns on the language and circumstances of the particular will. An amateur will-maker, though using the word "money" loosely, may be drawing a distinction between "my money" and "my land," and, indeed, may mean to include leaseholds as well as freeholds in the latter expression, if he owns both. In the present case, the testatrix owned no leaseholds, so the question whether "all moneys" would have included leaseholds does not arise. On the other hand, the will deals separately with the more important of the freeholds, and this circumstance goes to show that "all moneys" in this will does not include the omitted freeholds. If the expression were "all remaining "moneys" it might have been different.

I have felt it right to deal with this case in the wider aspect, but before parting from it I must add that I am much disposed to share the view which I understand commends itself to some of your Lordships, that even if the so-called rule of construction were to be left standing, there are some indications in this will which might justify the application of the so-called rule being displaced by the language used and the circumstances of the case. The testatrix directed that "all moneys "of which I die possessed" should be "shared by my nephews "and nieces" as named. The testatrix held very considerable investments to which she makes no separate reference in her will. If the state of her property when she made her will was anything like what it was at her death, she must, therefore, either have deliberately intended to die intestate in respect of her stocks and shares and to leave these nephews and nieces to share in what happened to be the balance at her bank at the moment of her death and little else, or else she must have used the phrase "all moneys of which I die possessed" as covering her investments also. But whether or not these considerations would be sufficient to overthrow the presumption which has for so long been regarded as prima facie forcing the court to apply a narrower meaning, it is clear that, when the rule is rejected and the present will is given its natural construction free from the restraining use of a judicial dictionary, the appeal should succeed.

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The present question is not, in my opinion, one in which this House is required, on the ground of public interest, to maintain a rule which has been constantly applied but which it is convinced is erroneous. It is far more important to promote the correct construction of future wills in this respect than to preserve consistency in misinterpretation. The view expounded by Lord Birkenhead L.C. in *Bourne* v. *Keane* (1) applies here. As Meredith J., in his pungent and entertaining judgment in *In re Jennings. Caldbeck* v. *Stafford* (2) observes, the judiciary has waged a long fight to teach testators that "money" means "cash," but as the ordinary testator who makes his own will does not study the law reports, he persists in constantly using the word in a wider sense, and it is time that in such cases a "popular" meaning prevailed over the "legal" one. I, therefore, move that the appeal be allowed, and that it should be declared that the bequest of "all moneys "of which I die possessed" includes all the net personalty of the estate of the testatrix.

LORD ATKIN (read by Lord Thankerton). My Lords, I have had the opportunity of considering the opinion of the Lord Chancellor with which I wholeheartedly agree, and find it unnecessary, therefore, to repeat his reasoning. The substance of the matter seems to be that the word "money" at the present time has a diversity of meanings, and that when it is found in a will there is no presumption that it bears one meaning rather than another. The testator obviously meant to dispose of, at any rate, some part of his property by the phrase, and the construing court has to ascertain what was meant, being guided by the other provisions of the will and the other relevant circumstances, including the age and education of the testator, his relations to the beneficiary chosen, whether of kinship or friendship, the provision for other beneficiaries, and other admissible circumstances. Weighing all these, the court must adopt what appears the most probable meaning. To decide on proven probabilities is not to guess but to adjudicate. If this is to decide according to the "context," I am content, but I cannot agree that the court is precluded from looking outside the terms of the will. No will can be analysed in vacuo. There are material surroundings such as I have suggested in every case, and they have to be taken into account. The sole object is, of course,

(1) [1919] A. C. 815, 860. (2) [1930] I. R. 196.

to ascertain from the will the testator's intentions. The result of your Lordships' decision will be to relieve judges in the future from the thraldom, often I think self-imposed, of judgments in other cases believed to constrain them to give a meaning to wills which they know to be contrary to the testator's intention. In the competition for bad pre-eminence in departure from the true meaning I think I should place first the decision of Turner and Knight Bruce L.JJ. in *Lowe* v. *Thomas* (1), where the testator being possessed of stocks and some cash had left his "money" to his brother for life and on his death to the brother's two daughters with ultimate remainder to the survivor. The testator left 50*l.* cash, and it was held that, despite the series of life interests, the bequest only passed the cash. The poorest mind would know that this was absurd, and so, plainly, did the lords justices, but they were held in thrall. A high place, however, in the competition could be given to *In re Hodgson* (2), where a nurse, asked to make her will within two days of her death and having in her case by the side of her bed some 800*l.* in cash and 600*l.* in savings certificates, left all her "money" to a named beneficiary. She left no next-of-kin and the Crown claimed and was awarded the savings certificates as bona vacantia. In the future the resources of the Crown will receive no such flagitious increment. I anticipate with satisfaction that henceforth the group of ghosts of dissatisfied testators who, according to a late Chancery judge, wait on the other bank of the Styx to receive the judicial personages who have misconstrued their wills, may be considerably diminished. It will be a relief to the whole legal profession that at last what the Master of the Rolls rightly called a blot on our jurisprudence has been removed. On this particular will I have no doubt that for the reasons given by the Lord Chancellor and others of your Lordships the word "money" in the bequest comprised the whole of the testatrix's personal estate.

LORD THANKERTON. My Lords, this appeal arises out of the application by both courts below of a rule of construction of wills, by which they felt bound to construe the words "all "moneys of which I die possessed," which occur in the will, as including only dividends received or accrued, cash at the bank, rents due, the proportion of rents payable to the testatrix as life tenant, and income tax repayment, there being, in the

(1) 5 De G. M. & G. 315. (2) [1936] Ch. 203.

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opinion of these courts, no context sufficient to justify a wider meaning. I have had the privilege of considering the written opinions of all your Lordships, and the facts of the case have been fully stated by the noble and learned Lord on the woolsack, who has also reviewed the main decisions which are material.

Thus two questions arise in the appeal. The first relates to the rule of construction, and is whether the rule, as applied by the courts in the decisions referred to, is a wrong rule altogether, or is a sound rule which has been wrongly applied. This appears to be the first time that this House has had occasion to consider this rule, and I agree with the view, in which I gather all your Lordships concur, that the rule has, at least, been much misapplied. The second question is whether, assuming the rule to be sound, there is a sufficient context in the present case to justify a wider construction of the words "all moneys of which I die possessed." On the second question, I am of opinion that there is here a sufficient context to justify the construction of these words as intended to include the whole of the residuary personal estate, and I agree with the statement of the relevant circumstances by my noble and learned friend Lord Romer, while noting also the absence of an express residuary gift and the appointment of an executor, but it still remains right to express an opinion on the first question.

In England, as in Scotland, the cardinal rule of construction of wills is that they should be so construed as to give effect to the intention of the testator, and I make no excuse for citing a passage from the opinion of Lord Justice Clerk Moncrieff in *Easson* v. *Thomson's Trustees* (1), which raised a similar question: "I am of opinion that these expressions 'money' "or 'moneys' as here used are capable of including and "are terms apt to include the testator's whole movable estate. "Their meaning is of course to be collected from the context, "the place where, and the subject in regard to which, they "are used; and the question is neither what the testator meant, "apart from the words, nor what the words might mean, apart "from intention, but what the testator meant by using them." My Lords, it is clear that there has been a tendency on the part of the courts to allow this cardinal rule of construction to give way to the application of what is called the strict legal sense of the word "money." Marked illustrations of this

(1) (1879) 7 R. 251, 253.

tendency are to be found in the opinions of Leach M.R. in *Gosden* v. *Dotterill* (1); of Page Wood V.-C. in *Lowe* v. *Thomas* (2); and of Lord Selborne in *Byrom* v. *Brandreth* (3). The material passages have been quoted by my noble and learned friend, the Lord Chancellor, and, in my opinion, they justify, in that view, the description of such application of the rule by the learned Master of the Rolls in the present case as "a blot upon our jurisprudence."

There remains the question whether the rule, if purged of such tendencies, can survive, and, on this point I observe some difference of opinion among your Lordships. I will, accordingly, express the opinion that I hold on this point, though I doubt whether, apart from one not unimportant element, there is any real difference between your Lordships. There can be no doubt that the word "money" is capable of being aptly used by a testator in one of various senses in conformity with the ordinary use of the English language, and that the paramount duty of the court is to decide on the sense in which the particular testator used the word in the particular will without any prior presumption as to the particular sense intended by the testator. In my opinion, the cases should be rare in which the court is not able, in discharge of its paramount duty, to determine the sense in which the testator meant to use the word. These cases can only be cases where there is final ambiguity as to which of two or more senses was intended by the testator, and it may well be that the court, in order not to defeat the will, is entitled to hold, as a general rule, that one of these senses is more likely to have been intended by the testator than the other or others. I cannot, however, agree that any such rule can become stereotyped in perpetuity, for such a conception would ignore the fact that the testator's use of the word must be referable to the ordinary uses of the English language at the time when he is making his will, and the ascription to the testator of an intention to use the word in a sense which was determined to be the leading sense in an earlier age, without any regard to the possibility of a variation in this respect which had become current in the English language by the time that the will was made, is not justifiable. The rule here founded on appears to be based on the arbitration award of Gilbert C.B. in 1725—over two hundred years ago—and to have become

(1) 1 My. & K. 56, 59.
(2) Kay, 369, 378.
(3) L. R. 16 Eq. 475, 478.

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established before the decision of Lord Eldon L.C. in *Hotham* v. *Sutton* (1)—over a hundred and thirty years ago. The mere fact that the original strict meaning of the word "money," as relating to coin, was held to be subject to relaxation because of the current use of the word at that time, is sufficient, in my opinion, to permit a further relaxation if, in the passage of later years, there has occurred a variation in the sense in which the word is more ordinarily used in the English language. If the court is satisfied that such a variation has occurred, then, in my opinion, it is its duty to give effect to it in the case of a testator who makes his will at a time subsequent to the establishment of such a variation. The court is entitled to be credited with a knowledge of the ordinary use of the English language, and has a duty to apply such knowledge. Exempli gratia, I should think that war savings certificates, as suggested by the Master of the Rolls (2), might well be considered as covered by the ordinary use in the English language, since the last war, of the word "money," and, if that view be correct, I am of opinion that the court would be contravening its paramount duty if it rejected the current use of the word in these days in order to apply the sense which was current in 1725 or in 1808. There does not appear to me to be any occasion for a separate rule in the matter. It is rather to treat the testator, in the case of ambiguity, as having used the word in the sense which the court adjudges to be the more ordinary use of the word in the English language at the time at which the testator used it. I concur in the motion proposed.

LORD RUSSELL OF KILLOWEN (read by Lord Romer). My Lords, I have had the opportunity of reading the opinion prepared by my noble and learned friend Lord Romer in which he points out why, on the language of this particular will, construed in the light of the relevant circumstances, the words "all moneys of which I die possessed of" should be construed as including the whole of the residuary personal estate of the testatrix. I agree with him both in his reasoning and in his conclusion. This result is arrived at in this case on the context of the document. Context has always prevailed against the now much abused rule, as to which I desire to make some observations. The rule, which is attributed to Gilbert C.B., was in its inception a kindly rule. It was not

(1) 15 Ves. 319. (2) [1942] Ch. 345, 347, 348.

a restrictive rule, although, strangely enough, it has given rise to the expression "the strict meaning of money." It was a rule born at a time when a man's money meant cash in his possession, and the rule extended the meaning of the bare word so as to include money not in his possession but presently due to him, or, as the Chief Baron (in referring to a testatrix) said, it included ready money and money due, i.e., both her money in her own hands and her money in the hands of anybody else. From time to time the meaning has been widened so as to include other assets, but I have always understood the rule as one which yielded to a sufficient context. With this understanding I do not see why the rule, properly applied, should fail to work justice. The blot, if any, is not the rule, but its misapplication.

There has been, however, a tendency for courts to allow the rule to prevail over context, and to operate as a hard and fast limitation of the meaning of the word "money" when used in a will, and I agree with your Lordships that it is advisable to take this opportunity of establishing that the meaning of the word "money," when used by a testator (whether inops consilii or himself a skilled conveyancer) is not restricted by any hard and fast rule, but depends on the context in which it occurs, properly construed in the light of all relevant facts. In other words, given such a sufficient context, the word "money" may include more than what has been called the strict meaning, and may even include the whole residuary personal estate. Instances of this are the decisions of Malins V.-C. in *Prichard* v. *Prichard* (1) and Kay J. in *In re Cadogan* (2). Beyond this I am not prepared to go. I am not prepared to abolish the rule. So long as it yields to context, it is, as I have said, a kindly rule, and, being a rule of long standing which has for many years decided the title to property other than cash in hand, it should not be disturbed. To abolish it would be a retrogressive step. Let me give an instance. If a testator leaves his money to A and the rest of his property to B, how is the will to be construed? If the rule is abolished, the context admits of only one answer. A will only get the cash in the house. If the rule survives, he will, in addition, get moneys in the bank, and any other assets of the testator to which the rule applies.

Two further remarks I desire to make. Let it be clear, that

(1) L. R. 11 Eq. 232. (2) 25 Ch. D. 154.

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nothing in this case affects indirectly any other of the many rules for the construction of wills. Those of us who in the past have discharged this almost daily task know full well how important it is that certainty in these matters should exist, and how successfully confusion and uncertainty have been avoided by the applications of these rules which are the product of the learning and wisdom of our predecessors. I wish also to state that I agree with Lord Romer in his remarks as to those judgments in which learned judges have stated their belief that their construction of a will defeats the testator's intention. Either they have misconstrued the will, or they have been indulging in guess-work.

LORD ROMER. My Lords, I take it to be a cardinal rule of construction that a will should be so construed as to give effect to the intention of the testator, such intention being gathered from the language of the will read in the light of the circumstances in which the will was made. To understand the language employed the court is entitled, to use a familiar expression, to sit in the testator's armchair. When seated there, however, the court is not entitled to make a fresh will for the testator merely because it strongly suspects that the testator did not mean what he has plainly said—that he was, in fact, one of those persons of whom Knight Bruce L.J. said that they spoke as if the office of language were to conceal their thoughts. In many of the cases to be found in the books the court is reported to have said that the construction it has put on a will has probably defeated the testator's intention. If this means, as it ought to mean, that the court entertains the strong suspicion to which I have just referred, no sort of objection can be taken to it, but if it means that the court has felt itself prevented by some rule of construction from giving effect to what the language of the will, read in the light of the circumstances in which it was made, convinces it was the real intention of the testator, it has misconstrued the will.

My Lords, I do not, of course, intend to suggest that well-settled rules of construction are to be disregarded. On the contrary, I think that they should be strictly observed, but they ought to be applied in a reasonable way. It is, no doubt, of great importance to lawyers and others engaged in the preparation of wills that they should have the certainty of knowing that certain well-known words and phrases will

receive from the court the meaning that the court has for generations past attributed to them. Much confusion and uncertainty would be caused if this were not so. The rules of construction, in other words, should be regarded as a dictionary by which all parties, including the courts, are bound, but the court should not have recourse to this dictionary to construe a word or a phrase until it has ascertained from an examination of the language of the whole will, when read in the light of the circumstances, whether or not the testator has indicated his intention of using the word or the phrase in other than its dictionary meaning—whether or not, in other words, to use another familiar expression, the testator has been his own dictionary. I have thought it desirable to make these remarks, however elementary and obvious they may seem to be, as I have noticed in some of the reported cases on wills a tendency on the part of the court to pay more attention to the rules of construction than to the language of the testator. This is especially the case where the word "money" is concerned. The rule relating to this word is a strange one. Its prima facie meaning is what would normally be described in the balance sheet of a trading concern as "cash in hand," but the courts have given it a wider meaning when used in wills, and, as the rule now stands and has stood for many years, the word includes in addition certain choses in action by means of which cash is readily procurable. It includes, for instance, balances due to the testator on current or deposit account at his bank. A testator does not, of course, possess any of the cash that is at the bank, but people commonly speak of the balances due to them from the bank as their money at the bank, and the rule can be justified on this ground. But people just as commonly speak of their money in the funds or their money in this or that company or concern, and why all stocks and shares such as usually form the bulk of a testator's personal property should not also be included is what I have never been able to understand. I can see no intelligible reason for excluding them when the rule was opened so as to admit a testator's balance on deposit account, but such seems to be the law, and when a testator is found to be using the word "money" to distinguish one item of his property from the remainder the word prima facie bears the meaning attributed to it by the rule. A testator, nevertheless, may by his will when properly construed show an intention not to use the word "money" as defined by the rule, but to include in it

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his Stock Exchange investments or even the whole of his residuary personal estate. The question to be decided on this appeal is whether such an intention is to be found in the will of Miss Emily Rose Morgan who died on October 14, 1939. Your Lordships are by now familiar with the precise words of that will, which is dated September 27, 1935. I need not, therefore, repeat them, but I venture to say that no one who reads those words and will for the moment dismiss from his mind the rule as to the construction of the word "money" will entertain the slightest doubt that by the words "all moneys of which I die possessed" the testatrix intended to include the whole of her residuary personal estate. And this will be due to no mere guess work. It will be solely due to the effect produced on the mind of the reader by the language used by the testatrix construed in the light of the circumstances in which her will was made. The relevant circumstances were these. The testatrix at the date of her will had two sisters living. All her brothers and her other sisters were dead, but there were living fifteen nephews and nieces. In these circumstances she left a pecuniary legacy of 500*l.* to one sister, who predeceased her. The only other beneficiaries mentioned in her will were fourteen of the nephews and nieces, for whom she made provision in these words: "I "direct that all moneys of which I die possessed of shall be "shared by my nephews and nieces now living namely." She then named the fourteen nephews and nieces. I am inclined to surmise from the words "my nephews and nieces "now living" that the one nephew omitted from the list was so omitted through an oversight, but, however this may be, I find it impossible to regard the direction as merely applying to moneys as defined by the rule. The use of the word "moneys" in the plural and the use of the word "all" emphatically point, in my opinion, to an intention to dispose of something more than money as so defined and to make the bequest as comprehensive a one as possible. I cannot for a moment believe that, had the testatrix intended to provide what was in substance the whole of the generation of her family next to her own with nothing but money as defined by the rule, she would have used the language that I have quoted. The words, in my opinion, according to their true construction mean the whole of her residuary personal estate. Except in the case of a death-bed will a testator is to be taken as disposing of his property as it may be constituted at some

date which he hopes may be far distant. In the present case, indeed, the testatrix in terms describes the subject of her bequest in favour of the nephews and nieces as moneys of which she will be possessed at her death. It must, therefore, be taken to have been in her contemplation that at that date she might possess very little or even no money within the meaning of the rule. It is surely almost ridiculous to suppose that she has by her will directed that there shall be divided between no less than fourteen nephews and nieces merely what cash there might be in the house at the date of her death together with such balance as happened to be then standing to her credit at the bank and the few paltry sums that might have accrued at that date from rents, interest and dividends. This further may be observed. If the testatrix intended, as, in my opinion, she did, to give to her nephews and nieces the whole of her residuary personal estate, what would in fact be divided between them by the executor would, owing to their large number, consist in all probability of cash. This may possibly be the explanation of why the testatrix when directing that her residuary personal estate should be shared by the nephews and nieces described it by the word "moneys," but, whatever may have been the reason actuating the testatrix, I am satisfied that in this particular will the word was, in fact, used as meaning the whole of her residuary personal estate. My Lords, in my opinion, this appeal should be allowed, and I agree with the motion before the House.

Appeal allowed.

Danckwerts. Your lordships will remember that I appeared for four of the respondents, one of whom was the executor and the other three of whom were respondents who wished to take advantage of the appeal but who were not represented in the Court of Appeal and were not in a position to make an appeal to your lordships' House without leave. My request is that they should be given the indulgence of being put into the position of appellants, or, at any rate, of being put into the position of being able to take advantage of your Lordships' decision.

VISCOUNT SIMON L.C. Although sometimes it may create difficulty for counsel, they are, strictly speaking, expected to intervene before the question is voted on. I think you are

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right to raise the point, because it might well be thought that, if a party did not appeal from the order of Farwell J. and another party did, it would be only the party who appealed who might gain from his success.

Danckwerts. The point was so dealt with in *Elliot* v. *Joicey* (1). In that case there was one person whose interest it was to benefit by an order made by the House of Lords and he neither appealed nor appeared and he was excluded by the terms of the order. I am only desirous of preventing that effect applying in this case. It is not the same because in *Elliot* v. *Joicey* (1) the person in question did not take any part in the proceedings before the House.

VISCOUNT SIMON L.C. We shall not indicate any view which is unnecessarily wide, but a particular construction has now been put on the words of this will, and I should have thought that, at any rate in this case, that might be regarded as enuring to the benefit of all the named nephews and nieces.

LORD THANKERTON. There cannot be two orders of Farwell J. There can be only one and the only order now is Farwell J.'s order as varied by this House.

Solicitors for appellants: *C. R. Enever & Co.*

Solicitors for respondents: *Park Nelson & Co., for G. B. Footner & Sons, Romsey, Hants, and Stocken, May, Sykes & Dearman, for Godwin & Co., Winchester.*

(1) [1935] A. C. 209.