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erring in thus ascertaining the intention of the Legislature; then it will be for the Legislature to make an appropriate amendment. If any such amendment is made, or even, if no such amendment is made, I hope the authorities may at some comparatively early date see their way to have a re-enacting Code which collects in one single Act of the Legislature all those various amendments which have been made since 1879. It is now extremely embarrassing for the ordinary practitioner to try and find his way through these various Acts and amending Acts that have taken place over all these years. And one is almost bound to rely on some text-book which has done this work, which, in my opinion, is more properly done by a consolidating and amending Act. This is, I think, none the less necessary, because the Act seems to me to be a particularly difficult one to construe, at any rate, as regards some of its provisions.

I agree that this appeal must be allowed, and that the order of the trial Judge must be restored with costs throughout.

*Decree reversed.*

J. G. R.

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PRIVY COUNCIL.\*

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KAIKUSHRU BEZONJI NANABHOY CAPADIA (PLAINTIFF) v. SHIRINBAI BEZONJI CAPADIA AND OTHERS (DEFENDANTS).

[On appeal from the High Court of Judicature in Bombay.]

*Will—Construction of will of Parsi testator—Gift after prior interests to person 'if then living'—Rule for construction of such gifts—Word 'then' refers to last antecedent—Vested or contingent interests.*

A wealthy Parsi resident of Bombay died on 3rd April 1906 leaving his wife S (the first respondent), two sons J and K (the present appellant-plaintiffs)

\* *Present*:—Lord Shaw, Lord Phillimore and Sir John Edge.

and several daughters him surviving. By his will dated 10th April 1905, after appointing executors and trustees, and leaving annuities to members of his family during the life of S, directing that the residuary income should be divided and paid during her life to J and K, and making provision in the event of either son's death for his widow and issue, he devised to S for her life "Capadia House" in which he was living, and directed his executors during the life of S to let another house of his called "Rutton Villa," the rent of which was to count as part of the residuary income. The testator further (clause 19) directed that "after the decease of my wife, or in case she shall predecease me, then forthwith after my death," the executors should stand seised and possessed of "Capadia House and the furniture therein, and Rutton Villa and all my residuary property," and he devised "Capadia House" to the trustees upon trust for his said son J for life and in the event of his death, upon trust for his widow and issue in such shares as J may by his will appoint to his widow, "and subject thereto and in default of any such appointment upon trust to J's issue, and in default of any such issue, and subject to any appointment for his widow as aforesaid upon trust for his brother K, *if then living*, and failing him upon trust for the right heirs of me" (the testator). In clause 21 there were similar limitations with respect to "Rutton Villa," except that it was devised to K, and the sons' names were in inverse order. J died in June 1908 without widow or issue, but S was still living. In a suit by K claiming that on J's death he became entitled to "Capadia House," and his share of the residuary property subject to the life interest of S, it was held by the Courts in India that K's interest was contingent on his surviving S, and until her death the questions raised in the suit could not be decided.

*Held*, by the Judicial Committee (reversing those decisions), that the case fell within the rule "that where there is a gift, after prior interests to persons then living the word 'then' refers most naturally to the last antecedent," and that the words "if then living" in clause 20 of the will in suit meant living at the death of J.

*Archer v. Jagon*<sup>(1)</sup>; *In re Milne*<sup>(2)</sup>, followed.

This result was not affected by the facts that the prior gift to S for her life was direct, and the subsequent gifts indirect through the medium of trustees, and the particular language of the will in the present case did not take the dispositions out of the rule above laid down, but on the contrary rather supported its application.

APPEAL 118 of 1917 from a judgment and decree (31st July 1916) of the High Court at Bombay in the

<sup>(1)</sup> (1837) 8 Sim. 446.

<sup>(2)</sup> (1887) 57 L. T. N. S. 826.

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exercise of its Appellate Jurisdiction which affirmed a judgment and decree (12th February 1916) of the same Court in the exercise of its Original Jurisdiction.

The question for determination in this appeal was, as to the construction of the will of one Bezonji Nanabhoy Capadia, a Parsi resident of Bombay, who died on 3rd April 1906, leaving a widow, Shirinbai, the first respondent, two sons Jehangir Bezonji Capadia, and the appellant, and three daughters, Motibai, the 9th respondent, Bachoobai, the 10th respondent, and Dhanbai Bezonji Capadia, the 11th respondent. The respondents Nos. 2 to 8 were the trustees of the will, and the respondents Nos. 12 and 13 were respectively the wife and minor daughter of the appellant.

At the time of his death the testator was possessed of two houses known respectively as "Capadia House" and "Rutton Villa," both situate at Gowalia Tank Road in Bombay, and also of considerable moveable property; and by his will, dated 10th April 1905 the testator devised Capadia House to his wife for life, and directed his executors to let Rutton Villa, and hold the rents thereof and the rest of his income on trust to pay certain annuities thereout during the life of his widow Shirinbai, the 1st respondent, and to divide the remainder of the income between his sons Jehangir and the appellant in equal shares, with a provision that if either of them died during the lifetime of Shirinbai (his widow) his share, if he died unmarried, should go to his brother.

The material clauses of the will are set out in the judgment of the Judicial Committee.

Jehangir died unmarried and intestate on 18th January 1908 leaving as his heirs the appellant and the 9th, 10th and 11th respondents, and doubts having then arisen as to the true construction of the will, the appellant on 11th January 1916 instituted the present

suit for the construction of the will, for a declaration that in the events that had happened he was entitled absolutely to Capadia House subject to the life interest therein of the 1st respondent, and to half of the residue of the estate subject to certain annuities to be paid by clauses 16, 17 and 18 during the lifetime of the 1st respondent; and that his rights in the other half of the residue might be determined.

The respondent Nos. 9 and 10 claimed that the interest given to the appellant in "Capadia House," and half the residue of the estate was contingent on his surviving the testator's widow, and that the question whether it was so contingent or had already vested could not be tried until the widow's death.

The Court ordered that on 12th February 1916 the respondents should attend before the Judge in Chambers for the determination of certain questions of which those material to the present report are set out in the judgment of the Judicial Committee.

The case, on the above date was argued before Macleod J. in Chambers, whose decision after stating the facts and the material clauses of the will was as follows:—

"My first impression when I read the plaint was that the suit is premature. The time for discussing what is the construction of the provisions of the will for the disposition of the testator's property after the death of Shirinbai will come when Shirinbai dies. There may or may not be other interests arising which have not now arisen. That is a safe and sound principle to follow when in a will of this kind the testator makes certain dispositions of his property pending the life-time of his widow if she survives him and then directs that a change in the trusts should take place after the life of the widow. It is not advisable however doubtful the terms of the will may be that the question what are the new trusts which are to come into operation should be discussed until that event has happened. Therefore, I do not propose to answer any of the questions propounded. Costs out of the estate."

An appeal by the present appellant to the High Court in its Appellate Jurisdiction came before Sir Basil Scott C. J. and Heaton J. who both delivered judgments.

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HEATON, J. :—(after reading the material clauses of the will) said :—

“If clauses 19 and 20 be taken apart from the earlier part of the will they might be read to be the provision made in case Jehangir survived Shirinbai, in which case one would naturally expect to find elsewhere provision for the case of Jehangir predeceasing Shirinbai. But there is no such provision elsewhere. Therefore, I feel no doubt that clause 20 contemplates the case of Jehangir predeceasing Shirinbai and if that is so, the words of the clause also as I read them contemplate the case of Kaikhushru also predeceasing Shirinbai. Moreover, I think that this clause expresses what the testator directed should happen on the death of Shirinbai. The moment of time he had in mind was that of Shirinbai's death (see clause 19). He had provided completely for the disposal of the property up to that moment and what he had in mind was the disposal after that moment. Inevitably such disposal would depend on who survived Shirinbai and what the testator had in mind in clause 20 was I think such of the persons named or described as should be living when Shirinbai died. I think in short that the words ‘if then living’ in the sentence ‘upon trust for his brother the said Kaikhushru if then living’ mean living at the time of Shirinbai's death. That I believe to be the testator's meaning and intention and to my mind it does no violence to the words used. That they can be otherwise read is of course obvious or this litigation would not be before us. But to read the words ‘if then living’ as meaning if alive at the time of Jehangir's death not only as, I think, is contrary to the testator's intention but it would have this curious result. Kaikhushru would take a vested interest in Capadia House and in case he died before Shirinbai it would go eventually to his heirs and not to the ‘right heirs of the said Bezonji.’ But he would not take a vested interest in Rutton Villa (see clause 21). If he died before Shirinbai, ‘Rutton Villa’ (Jehangir also being dead) would go to the ‘right heirs’ of Bezonji and not to the heirs of Kaikhushru. And this would be the result though Kaikhushru's interest under the will in Rutton Villa is more direct and less contingent than his interest in Capadia House. I think, therefore, that it is impossible to determine the result of the provisions of the will until we know who survive Shirinbai, so I think Macleod J. was right.”

SCOTT, C. J. :—Concurred. He said :—

“The words ‘then living’ in clause 20 create a difficulty. The rules for the construction of this expression deduced by Theobald from the English cases are ‘that’ when there is a gift after prior interests to persons ‘then living’ the word ‘then’ refers most naturally to the last antecedent; thus in the case of a gift to A for life remainder to B for life remainder to a class ‘then living’ the word then refers to B's death whether he dies before A or not.

On the other hand if the object of the testator is not to limit successive interests but to provide for personal enjoyment by the legatees by substituting for persons dying before the period of enjoyment a class of persons then living the word 'then' refers most naturally to the period of enjoyment. This is borne out by the cases *Harvey v. Harvey*<sup>(1)</sup> and *Gill v. Barrett*<sup>(2)</sup>. In *Harvey v. Harvey*<sup>(1)</sup> a testator gave a legacy to his daughter for life and after her death to her son but in case he should have departed this life in the life time of his mother then to pay it amongst all the children of his son who should be *then* living. The testator's son died in his mother's lifetime and Lord Langdale held it 'so clear that the children who were living at the death of the daughter were only entitled that he ordered the executor to pay the costs because he had refused to pay the legacy.' In *Gill v. Barrett*<sup>(2)</sup> the testator devised an estate to his sons Phineas and John equally during the life of Phineas and until his youngest child attained 21, and on the death of Phineas and on the youngest attaining 21 to sell it and pay one half of the money to John and his heirs, and the other half among the then living children of Phineas. But in case of John's death without lawful issue before the division took place then he gave John's half share to and amongst his *then living* grand children share and share alike. John died without issue in 1827. Phineas died in 1858, without leaving children surviving. It was held that the grand children were to be ascertained at the period of division, namely, the death of Phineas and that the representatives of a grand child who died in 1856 took no share. Clause 19 of the will now under consideration indicates that the testator intended the death of Shirinbai to be the period for the ascertainment of the beneficiary or beneficiaries substituted for Jehangir. As that period has not yet arrived the learned Judge of the lower Court arrived at the right result in dismissing the summons. We dismiss the appeal with costs."

On this appeal,

*P. O. Lawrence, K. C.* and *Kenworthy Brown* for the appellant contended that the testator did not intend the death of his widow to be the period for the ascertainment of the beneficiary or beneficiaries substituted for Jehangir; and that the words "if then living" in clause 20 of the will should be taken to mean living at Jehangir's death, which was in accordance with the rule laid down in *Archer v. Jegon*<sup>(3)</sup>; that rule of construction, as stated in *Jarman on Wills*, 6th edition,

(1) (1839) 3 Jur. 949.

(2) (1860) 29 Beav. 372.

(3) (1837) 3 Sim. 446.

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p. 1675, has been often followed, and was approved by Lindley J. in *In re Milne*<sup>(1)</sup>.

*E. B. Raikes* for respondents Nos. 9 and 10 (called on to support the decision appealed from) contended that the Courts below were right in refusing to decide the question as to the interest of the appellant in "Capadia House," and in the residue of the estate until the death of the testator's widow which was the proper period to ascertain the persons interested to contest the appellant's claim until that event occurred. The provisions of the will after clause 19 were governed by the words "after the decease of my said wife." Until then there was no estate to vest under clause 20. The rule in *Archer v. Jegon*<sup>(2)</sup> was not applicable to the provisions of the will the terms of which excluded it: *In re Dundalk & Enniskillen Railway Co.*<sup>(3)</sup>. Reference was also made to *Hoghton v. Whitgreave*<sup>(4)</sup>; *Wordsworth v. Wood*<sup>(5)</sup>; *Harvey v. Harvey*<sup>(6)</sup>; *Gill v. Barrett*<sup>(7)</sup>; *Penny v. Commissioner for Railways*<sup>(8)</sup>; and the succession Act (X of 1865), sections 106, 107.

*Kenworthy Brown* replied.

1918, July 26th: The judgment of their Lordships was delivered by

LORD PHILLIMORE:—The suit to which this appeal relates was brought in order to settle certain questions of construction arising on the will of a wealthy Parsee inhabitant of Bombay, Bezonji Nanabhoy Capadia, who died on the 3rd April, 1906, leaving his wife, two sons, and several daughters surviving him. The will is dated the 10th April, 1905. It is long and elaborately drawn, and contains thirty-three paragraphs.

(1) (1887) 57 L. T. N. S. 828.

(2) (1837) 8 Sim. 446.

(3) [1898] 1 I. R. 219.

(4) (1819) 1 Jac. & W. 146 at p. 149.

(5) (1839) 4 My. & Cr. 641 at p. 645

(6) (1839) 3 Jur. 949.

(7) (1860) 29 Bea. 372.

(8) [1900] A. C. 628 at p. 634.

The testator appoints executors and trustees. He makes certain specific gifts, he directs his executors, "in the event of" the death of his wife, which must mean "on" the death of his wife (see *Penny v. Commissioner for Railways*)<sup>(1)</sup> to expend a certain sum of money in providing the expenses of her funeral and the customary rites and ceremonies. He makes certain provisions for a daughter on the occasion of her marriage, and he leaves annuities to be paid to the wife, the daughters, and certain other relatives during the wife's life, and he directs that the residuary income should be divided and paid during his wife's life to his two sons, with certain provisions in the event of either son's death for the latter's widow and issue. Then come gifts which are of special importance to the present purpose. He devises to his wife during the term of her natural life the house in which he was living called "Capadia House," and he directs his executors during the lifetime of his wife to let another house of his called "Rutton Villa," the rent of Rutton Villa being to count as part of the residuary income.

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Paragraphs 19, 20, 21 and 25 are those the construction of which is to be determined in this suit.

"19. I further direct that after the decease of my said wife Shirinbai or in case she shall predecease me then forthwith after my death my executors shall stand seised and possessed of the "Capadia House" and the furniture therein and "Rutton Villa" and all my residuary property upon the several trusts in that behalf hereinafter declared that is to say :—

20. My trustees shall stand seised of the "Capadia House", upon trust for my said son Jehangir for life and in the event of his death upon trust for his widow and issue in such shares and proportions as the said Jehangir may by his will direct provided that it shall not be lawful for the said Jehangir to appoint more than one-fourth part of the said premises to his widow and subject thereto and in default of any such appointment upon trust for the issue of the said Jehangir such issue to take *per stirpes* and not *per capita* and if more

(1) [1900] A. C. 628 at p. 634.

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than one in the same class equally between them and in default of any such issue and subject to any appointment for his widow as aforesaid upon trust for his brother the said Kaikhushru if then living and failing him upon trust for the right heirs of me the said Bezonji Nanabhoy Capadia as if I the said Bezonji Nanabhoy Capadia had died possessed thereof intestate in equal shares and proportions, but the issue of any heir shall take *per stirpes* and not *per capita* and if more than one in the same class equally between them and excluding from such heirs and such division the widowers of my said daughters and the widows of my said sons."

Paragraph 21 has similar limitations with regard to "Rutton Villa," the two brothers being put in inverse order.

"25. My trustees shall divide the rest residue and remainder of my property equally between my said sons Jehangir and Kaikhushru, but the property or the proceeds thereof shall be held by my executors for the benefit of the said Jehangir and Kaikhushru respectively upon the trusts which are hereinbefore declared of and concerning 'Capadia House' and 'Rutton Villa,' respectively as fully and effectually as if the share of the said residue given to my son Jehangir were part and parcel of "Capadia House" and the share of the said residue given to my son Kaikhushru were part and parcel of 'Rutton Villa.'

The son Jehangir is now dead without leaving widow or issue; but the widow of the testator is still living. The other son, Kaikhushru, now claims that he had fulfilled the condition imposed in paragraph 20, inasmuch as at the death of his brother he was "then living"; but those interested in the subsequent limitation as the right heirs of the testator in the language of paragraph 21, contend that Kaikhushru will not fulfil the condition in paragraph 21 unless he survives his mother as well as his brother.

In these circumstances Kaikhushru, who is the present appellant, brought a suit on the 11th January 1916, to have the construction of the will determined in respect of this and some other matters not now to be considered, making the trustees and executors, his mother, his sister, and certain other parties defendants, and having

filed his plaint took out a summons for the determination of certain questions *inter alia*:—

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"1. Whether in the events that have happened the plaintiff is not absolutely entitled to the property known as "Capadia House" subject to the life interest of the first defendant therein and who is now entitled and for what interests therein to the said House ?

2. Whether in the events that have happened the plaintiff is not entitled to the balance of the rents of "Rutton Villa" and the income of the residuary estate of the said testator subject to the annuities directed to be paid by clauses 16, 17 and 18 of the said will during the lifetime of the first defendant ?

3. Whether the plaintiff has not a vested interest in one-half of the residuary estate of the said testator and is not entitled to possession thereof on the death of the first defendant and whether the other half of the residuary estate is not subject to the same trusts as are created in respect of 'Rutton Villa.'

4. What are the rights and interests of the plaintiff in 'Rutton Villa' and in the residuary estate of the said testator during the lifetime of the first defendant and on her death ?"

Macleod J. being of opinion "that the proper time to construe the will with regard to the trusts which are to come into operation on the death" of the widow would arrive when the widow dies, declined to answer any of the questions propounded, but gave to the plaintiff and to the defendants Nos. 2 to 8 and 9 and 10 (there is apparently an error in the print of the record describing these last as 10 and 11), their several costs out of the estate as between attorney and client.

It appears to their Lordships that it was an error on the part of Macleod J., to consider the questions as premature and to refuse to answer them. If the construction for which the plaintiff contended was correct, he would have a vested remainder with which he could deal, and he was therefore entitled to the decision of the Court.

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From the order of Macleod J., an appeal was taken to the Appellate Division of the High Court at Bombay, and this Court entered upon the question of construction; but, taking a view unfavourable to the plaintiff, and holding that he had no vested interest, concurred in the decision of Macleod J., and dismissed the appeal, giving to the defendants Nos. 2 to 8 their costs out of the estate as between attorney and client, and ordering the plaintiff to pay the costs of defendants Nos. 9 and 10 as between party and party.

It is from this judgment that the present appeal is brought. The Chief Justice and Heaton J., who formed the Court, were of opinion that this case did not fall within the rule "that where there is a gift after prior interests to persons then living the word 'then' refers most naturally to the last antecedent"; but within another class of cases, such as *Harvey v. Harvey*<sup>(1)</sup> and *Gill v. Barrett*<sup>(2)</sup>, in which it was held that, if the object of the testator is not to limit successive interests but to provide for personal enjoyment by the legatees by substituting for persons dying before the period of enjoyment a class of persons then living, the word 'then' refers most naturally to the period of enjoyment.

If the fact that the prior gift to the wife for her life is direct and the subsequent gifts indirect through the medium of trustees be laid aside, the will falls directly within the rule of *Archer v. Jagon*<sup>(3)</sup>. In that case the testator gave a sum of stock interest for his sister for life, after her decease for her husband for life, and after his decease for the children of his sister "who should then be living." There were five children. The husband died first, then one of the children, then the wife; and it was held that the deceased child took a

(1) (1839) 3 Jur. 949.

(2) (1860) 29 Beav. 372.

(3) (1837) 8 Sim. 446.

vested interest in one-fifth of the fund, because the word "then" necessarily referred to the last antecedent, the husband's decease, and the child was living at that time.

*In re Milne*<sup>(1)</sup> the Court of Appeal followed and approved of *Archer v. Jegon*<sup>(2)</sup> holding that the word "then" in the will under discussion referred to the last antecedent. This was a very strong decision, because this construction created an intestacy. In the course of his judgment Lindley L. J., referred to the statement of the rule in Jarman on Wills, where the result of the cases *Archer v. Jegon*<sup>(2)</sup> and others is collected and summed up, with approval.

Counsel for the respondents relied upon the two cases quoted by the High Court, and also upon *Hoghton v. Whitgreave*<sup>(3)</sup> and *Wordsworth v. Wood*<sup>(4)</sup>.

Neither of these latter cases has any bearing upon the present one.

In *Hoghton v. Whitgreave*<sup>(3)</sup> the point to be decided was, who took under a bequest to survivors upon the death of the one tenant for life. In *Wordsworth v. Wood*<sup>(4)</sup> there might have been a question as to whether survivorship related to the death of the testator or to the death of the tenant for life. But the Lord Chancellor held that it was not a case of substitution of a child's issue for the child, but of modification of the gift to the child, and that the child had to survive the tenant for life in order to take.

In *Harvey v. Harvey*<sup>(5)</sup> there was a bequest of a life interest to a daughter, and the capital was then to go to the daughter's son; but in case he should die in the lifetime of his mother, the money was to be divided among his children then living, who were to take

(1) (1887) 57 L. T. N. S. 828.

(2) (1819) 1 Jac. & W. 146.

(3) (1837) 8 Sim. 446.

(4) (1839) 4 My. & Cr. 641.

(5) (1839) 3 Jur. 949.

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vested interests on attaining 21 or in the case of a female, marriage. It was held that the period when the class was to be ascertained was the death of the daughter. This was apparently on the ground that the division could not take place till her death. No cases appear to have been cited, and the decision turned upon the particular language of the will.

In *Gill v. Barrett*<sup>(1)</sup>, *Harvey v. Harvey*<sup>(2)</sup> and *Archer v. Jegon*<sup>(3)</sup> were cited, and the Master of the Rolls expressly gave his assent to *Archer v. Jegon*<sup>(3)</sup> and to the rule that "then" refers to the last antecedent. But in this case he held, as had been held in *Harvey v. Harvey*<sup>(2)</sup> that the time of division was the time to be looked to, and that the word "then" referred to that time. Neither of these cases are like the present one.

Counsel for the respondents submitted that, even supposing that the rule in *Archer v. Jegon*<sup>(3)</sup> would otherwise have applied, the particular language of this will would take the dispositions out of the rule; because the gift to the wife of Capadia House for her life was direct, whereas the subsequent limitations were to trustees for the benefit of the subsequent beneficiaries.

In their Lordships' opinion this argument rather tends in the contrary direction. The limitations which begin with paragraph 19 are all after the death of the wife, and the interests which they give are necessarily in remainder after her death. If they or any of them were to be conditional on survivorship of her and not in remainder to her, this ought to have been expressed at the outset of the clause, and it would be awkward, to say the least, to express it in the middle of the limitations. The limitations to the beneficiaries in clauses 20 and following may be treated as being all

(1860) 29 Beav. 372.

(2) (1839) 3 Jur. 949.

(3) (1837) 8 Sim. 446

bracketed under the trust, being limitations ensuing upon the death of the tenant for life. They may be conditional *inter se*. They are, however, not so expressed as to be conditional upon survivorship, but as subsequent to the life estate. If it had been intended to make the plaintiff's estate in remainder conditional upon surviving his mother instead of its being conditional upon surviving his brother, the words would have had to occur in a different collocation. If it had been intended to make it conditional upon survivorship of both, additional words would have been necessary.

Upon the whole, their Lordships are of opinion that the point is settled by authority, and that the construction of paragraph 20, for which the plaintiff contends, is the right one; and the same construction must be applied to paragraph 25, which directs that half of the residue should be held upon "the trusts declared of and concerning Capadia House."

A question was asked upon Rutton Villa and the other half of the residue; but it is not apparent why it was asked, as there is no difficulty or uncertainty upon these points in the will. It will be sufficient to make a general declaration which will give the answer to the material questions.

In the Court of First Instance costs were given to the plaintiff and to defendants, Nos. 2 to 8 and 9 and 10, as between attorney and client, out of the estate, and this was correct. In the Court of Appeal costs were given to defendants Nos. 2 to 8, as between attorney and client, out of the estate; this also was correct. The plaintiff was, however, ordered to pay the costs of the 9th and 10th defendants. This order can no longer stand. Their Lordships think that, this being a case of construction, and apparently one of some difficulty, and having given rise to difference of judicial opinion, it

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would be proper that the party-and-party costs of the plaintiff and the 9th and 10th defendants, who are the respondents on this appeal, should come out of the estate.

Their Lordships will, therefore, humbly recommend His Majesty that the judgment of the High Court should be reversed, except in so far as it confirmed that part of the judgment of Macleod J., which dealt with the costs of the suit, and except in so far as it awarded to the defendants Nos. 2 to 8 their costs out of the estate, as between attorney and client, and that it be declared that, in the events which have happened, the plaintiff is absolutely entitled to the property known as Capadia House and to the one-half of the testator's residue bequeathed upon the trusts declared of and concerning Capadia House, subject to the life interest of the first defendant, and that it be ordered that the plaintiff appellant and the 9th and 10th defendants and respondents should have their costs, as between party and party in the High Court and of this appeal out of the testator's estate.

Solicitors for the appellant: Messrs. *T. L. Wilson & Co.*

Solicitors for respondents Nos. 9 and 10: Messrs. *Lathey and Heart.*

*Appeal allowed.*

J. V. W.