

[HIGH COURT OF AUSTRALIA.]

ANGUS AND OTHERS APPELLANTS ;
 DEFENDANTS,

AND

ANGUS AND ANOTHER RESPONDENTS.
 DEFENDANT AND PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF
 NEW SOUTH WALES.

Will—Construction—Gift of corpus subject to defeasance—Right to income undisposed of—Period of distribution fixed—Accumulation. H. C. OF A.
 1917.

A testator by his will gave all his property real and personal to his trustees upon trust to sell and convert and out of the proceeds to pay certain legacies, and out of the net annual income to pay certain annuities including annuities to one of his two sons and his daughter until their deaths or until the time for distribution of his trust estate should arrive, whichever event should first happen ; and upon further trust as to one-half of the residue of the net annual income remaining after the payment of the annuities to divide the same equally between his widow and his three children until his youngest grandchild attained the age of twenty-one years or until the end of a period of twenty years after his death, whichever should first happen, which event he described as being the time for distribution of his trust estate. Subject to these provisions, the testator declared that the trustees should hold the whole of his trust estate (capital and income) for his three children in equal shares, with gifts over in the event of their dying before the time for distribution of his trust estate.

Held, on the terms of the whole of the will, that, as to the balance of the net income after payment of one-half of it to his widow and his three children, it should be accumulated until the arrival of the time for distribution of the trust estate.

Decision of the Supreme Court of New South Wales (*Harvey J.*) affirmed.

SYDNEY,
 Nov. 22, 29.
 Isaacs,
 Gavan Duffy
 and Rich JJ.

H. C. OF A. APPEAL from the Supreme Court of New South Wales.

1917.

ANGUS

v.

ANGUS.

James Angus, who died on 12th April 1916, left him surviving his widow, Charlotte Angus, and three children, James Angus, Rebecca Fleming and John Henry Smith Angus. By his will he gave his property real and personal to his trustees upon trust to sell and convert and to invest the proceeds and upon trust as to the trust moneys and investments thereof upon trust to pay certain legacies and upon trust out of the net annual income of his trust estate to pay certain annuities including an annuity to his wife for life. The will then continued :—" And also the following annuities :—To my son James Angus the sum of five hundred pounds a year during his life or until the time for distribution of my trust estate shall arrive And in the event of his decease prior to the time for distribution of my trust estate the sum of two hundred and fifty pounds a year to his wife (should she survive him) until her death or remarriage or until the time for distribution of my trust estate shall arrive whichever event shall first happen And in the event of his leaving a child or children him surviving then until the time for distribution of my estate shall arrive a sum of two hundred and fifty pounds per annum during the life or widowhood of his widow and thereafter a sum of five hundred pounds per annum or such part of either of such sums as my trustees shall in their absolute discretion think fit shall be applied by my trustees in or for the maintenance support education or benefit of his child or children and in such shares and proportions as to my trustees may seem fit To my daughter Rebecca Fleming the sum of five hundred pounds a year during her life or until the time for distribution of my trust estate shall arrive and in the event of her decease prior to the time for distribution of my trust estate then three hundred pounds or a greater part or the whole of such sum of five hundred pounds per year shall in the discretion of my trustees be applied until the time for distribution of my trust estate shall arrive in or for the maintenance education support or benefit of her daughter Mavis Fleming and any other child or children of my said daughter And upon further trust as to one equal half part of the residue of the net annual income of my trust estate remaining after payment of the said annuities to divide the same equally between my said wife and

my children James Angus Rebecca Fleming and John Henry Smith Angus and the survivors and survivor of them during their respective lives or until such time as my grandchild Mavis Fleming or other the youngest of my grandchildren living at the date of my decease shall attain the age of twenty-one years or at the end of a period of twenty years from the date of my death whichever shall first happen (which event is hereinbefore and hereinafter in this my will referred to as 'the time for distribution of my trust estate') And I declare that in the event of the decease of my said daughter Rebecca Fleming before the time for distribution of my trust estate then her share in such income shall go to or be applied in the discretion of my trustees for the maintenance education support or benefit of her daughter Mavis Fleming and any other child or children of my said daughter and likewise the share of each of my said two sons therein if he die before such period shall go to or be applied in the discretion of my trustees for the maintenance education support or benefit of his child or children And subject to the foregoing provisions I declare that my trustees shall hold the whole of my trust estate (capital and income) upon trust for my said three children James Angus Rebecca Fleming and John Henry Smith Angus in equal shares And I declare that if my said three children shall all die before the time for distribution of my trust estate shall arrive leaving no child or children who shall live to take a vested interest under the provisions of this my will then my trustees shall stand possessed of the whole of my said trust estate upon trust for the Governing Body of the Presbyterian Church in New South Wales And I declare that if my said daughter Rebecca Fleming shall die in my lifetime or after my decease before the time for distribution of my trust estate shall arrive then my trustees shall stand possessed of the shares and interests in my said trust estate both original and accruing which the said Rebecca Fleming would have taken had she survived me and also the time for distribution of my trust estate upon trust for such one or more of them the said Mavis Fleming and any other children of the said Rebecca Fleming as being female shall attain the age of twenty-one years or previously marry or being male shall attain that age to be divided amongst them if more than one in equal shares as tenants in common And I declare

H. C. OF A
1917.
ANGUS
v.
ANGUS.

H. C. OF A.
1917.
~
ANGUS
v.
ANGUS.
—

that if either of my said sons shall die in my lifetime or after my decease before the time for distribution of my said trust estate as herein provided leaving a child or children who shall survive him and who being a son or sons shall attain the age of twenty-one years or being a daughter or daughters shall attain that age or marry under that age then such child or children shall take but take absolutely and if more than one equally between them the shares and interests in my said trust estate both original and accruing which his her or their parent would have taken if such parent had survived me and also the time for distribution of my trust estate And I further declare that in the event of any of my three children hereinbefore named dying in my lifetime or after my decease before the time for distribution of my said trust estate without leaving such a child or children as above mentioned then the share in my said trust estate of my child or children so dying (or the part thereof still remaining) shall be distributed under the provisions of this my will as if such my child or children had never lived " &c.

An originating summons was taken out by the Permanent Trustee Co. of New South Wales Ltd., one of the trustees, the three children of the testator and Francis de Vernet Angus, an infant child of John Henry Smith Angus, being made defendants, for the determination of the following question (*inter alia*): Whether on the true construction of the will the three children of the testator were entitled to receive the balance of the net income of the testator's residuary estate after the division of one-half of the said income between the testator's widow and his three children as by the will directed, or whether such balance should be accumulated until the time fixed by the testator for the distribution of his trust estate. The originating summons was heard by *Harvey J.*, who in answer to the question declared that upon the true construction of the will the balance of such net income should be accumulated by the trustees until the time fixed by the testator for the distribution of his trust estate.

From that decision the three children of the testator now appealed to the High Court.

R. K. Manning, for the appellants. The three children of the testator are given the corpus of the residuary estate estate in fee

subject to be divested in a certain event. That gift carries with it the intermediate income which is not expressly disposed of. There is nothing in the will to cut down that right to the intermediate income. [Counsel referred to *Peter v. Shipway* (1); *Whitter v. Bremridge* (2); *Armytage v. Wilkinson* (3).]

H. C. OF A.

1917.

ANGUS

v.

ANGUS.

Clive Teece and *Bonney*, for the respondent *Frances de Vernet Angus*, were not called upon.

The judgment of the COURT, which was delivered by ISAACS J., was as follows :—

This case involves no considerations of a technical nature, and the only rule of law applicable is that it is the duty of the Court to read the whole will in order to determine the meaning of a contested portion of it. So reading it, we are of opinion that the view taken by *Harvey J.* is correct. The appeal will therefore be dismissed.

Appeal dismissed with costs.

Solicitors for the appellants, *Villeneuve-Smith & Dawes*.

Solicitors for the respondent, *Perkins, Stevenson & Co.*

B. L.

(1) 7 C.L.R., 232.

(3) 3 App. Cas., 355.

(2) L.R. 2 Eq., 736.