

ALLEN v. COSTER

Lord Langdale - Master of the Rolls

17th April 1839

[1840] RCA at pages 202-205

The testatrix, by her will, dated in 1828, expressed herself as follows:- AI give to my executors and trustees hereinafter named and the survivors or survivor of them the principal sum of 6000*l.* new 4 per cent. annuities, in trust to pay the dividends, interest and produce thereof, from time to time as the same shall become due and be received, unto *George Allen, of Northton, labourer, to be applied by him for the maintenance and education of George Allen the younger and Elizabeth Allen, the son and daughter of the said George Allen, of Northton, until the said Elizabeth Allen shall have attained the full age of twenty-one years, then upon trust that my said executors and trustees and the survivors and survivor of them do and shall pay and divide the said sum of 6000*l.* new 4 per cent. annuities, after setting apart so much thereof as will produce the two several sums of 20*l.* a year each, which I have hereinafter given to the said George Allen and to Hope Allen his wife and the*

survivor of them, for their lives, unto and equally between the said *George Allen* the younger and *Elizabeth Allen*, for their absolute use and benefit; and if either of them, the said *George Allen* the younger and *Elizabeth Allen* should happen to die before the said *Elizabeth Allen* shall attain her said age of twenty-one years, then I give the full part of him or her so dying to the survivor of them the said *George Allen* the younger and *Elizabeth Allen*, when and as soon as he or she shall attain the age of twenty-one years; and as soon as the said *Elizabeth Allen* shall have attained the said age of twenty-one years, or in the event of her death, then when and as soon as the said *George Allen* the younger shall have attained his age of twenty-one years, whereby the payment of the dividends or interest to the said *George Allen* the father will cease, then and from thenceforth I direct my said executors and trustees and the survivors and survivor of them, to pay the said *George Allen* the father, for and during the term of his natural life, and also to pay to the said *Hope Allen*, for and during the term of her natural life, an annuity or clear yearly sum of 20*l.* each, to be paid to them respectively, by equal half-yearly payments, out of the dividends which will become due on the said new 4 per cent. annuities half-yearly at the Bank of *England*; and upon the decease of the said *George Allen* the father and *Hope Allen* his wife, I direct the said annuities of 20*l.* given to him or her who shall so die shall go and be paid to the survivor of longest liver of them the said *George Allen* the father and *Hope Allen*: then I direct that the said stocks or funds which shall have been no set apart for securing payment of the said annuity, together with all dividends and interest (if any) then due or growing due thereon, shall be paid to and equally divided between the said *George Allen* the younger and *Elizabeth Allen*, in case they shall have attained the age of twenty-one years,

or to the survivor of them, in case either of them shall have died under the age of twenty-one years. @

The testatrix died in 1829. *George Allen* the elder was a person of low circumstances, being a common bricklayer=s labourer, and in consequence of the misconduct of himself and wife, the guardianship of his children, who were both infants, had been committed, by the Court, to other persons.

The fund now consisted of 6000*l.* new 3 per cent. annuities, the sum of 512*l.* 18*s.* 4*d.* Bank 3 per cent. annuities and 25*l.* 9*s.* cash.

George Allen the elder and *Hope* his wife presented this petition in the cause, submitting, Athat upon the true construction of the said testatrix=s will, they were entitled, during the minorities of the said infant Plaintiffs, to the dividends which had accrued and the accruing and future dividends on the said 6000*l.* bank annuities, from the death of the said testatrix, during the minorities of the said infant Plaintiffs, after properly providing for their maintenance, education and bringing up. @

The parents were in a state of great indigence, and kept from the parish by a person who charitably allowed them 10*s.* A week, until their rights on this petition had been determined.

Mr. *Kindersley* and Mr. *Rogers*, in support of the petition, contended, that this was a gift to the parents subject to a trust for the maintenance and education of the children, and that the surplus, after the performance of those trusts, belonged to the parents [see *Andrews v. Partington*]; and they relied on the case of *Heysham v. Heysham* [1 *Cox*, 179, 2 *Cox*, 223. *Hambley v. Gilbert, Jacob*, 254.] to shew that the Court might extend the allowance to the infants, in order to support the parents.

Mr. *Pemberton* and Mr. *Bird*, *contrà*.

Mr. *Willcock*, for the executors.

The Master of the Rolls. I think this is a case in which the Court can increase the maintenance of the children for the support of their parents; I feel reluctant in doing it, for the conduct of the parents has been of the worst kind; but I think, that without saying any thing as to the construction of the will, I may give to the infants the benefit of the income of the property, so as to assist the parents: To do so is evidently for the benefit of the infants themselves.

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