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Court : House of Lords

Decided On : Mar-25-1954

Judge : LORD CHANCELLOR, LORD OAKSCY, LORD MORTON OF HENRYTON, LORD ASQUITH OF BISHOP-STONE, LORD COHEN

Appeal No. : No.

Appellant : Chapman

Respondent : Chapman

Judgement :

Lord Chancellor

MY LORDS,

This appeal raises questions of considerable importance and for that reason, though I have had the privilege of reading the Opinion which my noble and learned friend. Lord Morton of Henryton, is about to deliver and agree with it in its reasoning and conclusions. I think it desirable to make same observations upon the main argument of the Appellants. By way of preliminary explanation, it is only necessary to say that your Lordships are invited to hold that a Judge of the Chancery Division of the High Court of Justice has an inherent jurisdiction in the execution of the trusts of a settlement to sanction on behalf of infant beneficiaries and unborn persons a rearrangement of the trusts of that settlement for no other purpose than to secure an adventitious benefit which may be and, in the present case, is, that estate duty, payable in a certain event as things now stand, will, in consequence of the rearrangement, not be payable in respect of the trust funds.

This argument, which found favour with Lord Justice Denning, is based, as I understand it, on two separate lines of thought which are for this purpose blended. On the one hand it is said that the Chancellor, the Court of Chancery and the Chancery Division of the High Court of Justice, exercising in turn on behalf of the Sovereign as parens patriae a peculiar jurisdiction over infants, had and has power to dispose of an infant's property in any manner beneficial to him in which he, if of full age. could have disposed of it ; and, on the other hand, it is said that the same Court whose duty it has been for some centuries to execute and administer trusts has jurisdiction to remodel those trusts by agreeing on behalf of infants and unborn persons to any rearrangement which it deems to be advantageous to them.

These two lines are happily united in the proposition of the learned Lord Justice which I quote—

He [that is Lord Hardwicke] proceeded on the broad principle that the Court had power to deal with the property and interests of infants and other persons under disability in a manner not authorised by the trust, whenever the Court was satisfied that what was proposed was most advantageous for them provided, of course, chat everyone of full age agreed to it. I hope to show that this is the true principle to-day.

It was natural that die learned Lord Justice should, upon the basis of an unlimited inherent jurisdiction,

proceed to the conclusion that, whenever the Court had in the past asserted a want of jurisdiction, it had of its own motion placed limitations on its own jurisdiction and, giving as examples of this abnegation its declared inability to remove a married woman's restraint on anticipation, to permit a sale of heirlooms or to sanction an unauthorised transaction for the sake of expediency, should observe that in all these cases the intervention of the legislature to vest these powers in the Court must not be read as delimiting the jurisdiction of the Court, but rather as removing limitations which the Court had imposed on itself. These statutory provisions he says " show that the Judges of the late nineteenth century made a mistake in tieing their own hands in these matters. We ought not to make the same mistake to-day.

My Lords. I am unable to accept as accurate this view of the origin, development and scope of the jurisdiction of the Court of Chancery. Ido not propose to embark on the arduous task of tracing to its sources this peculiar jurisdiction. Many volumes have been devoted to it, and I have refreshed my memory by reference to some of them. Nowhere can I find any statement which would support the broad proposition for which the Appellants contend. Moreover, the Law Reports contain many cases in which the scope of the jurisdiction has been discussed, everyone of them a work of supererogation if its scope was unlimited.

In my opinion, the true view that emerges from a consideration of this jurisdiction through the centuries is not that at some unknown date it appeared full-fledged and that from time to time timid Judges have pulled out some of its feathers, but rather that it has been a creature of gradual growth, though with many setbacks, and that the range of its authority can only be determined by seeing what jurisdiction the great equity Judges of the past assumed and how they justified that assumption. It is, in effect, in this way that the majority of the Court of Appeal in the present case have approached the problem and, in my opinion, it is the right way. It may well be that the result is not logical and it may be asked why, if the jurisdiction of the Court extended to this thing, it did not extend to that also. But. my Lords, that question is as vain in the sphere of jurisdiction as it is in the sphere of substantive law. We are as little justified in saying that a Court has a certain jurisdiction, merely because we think it ought to have it, as we should be in declaring that the substantive law is something different from what it has always been declared to be, merely because we think it ought to be so. It is even possible that we are not wiser than our ancestors. It is for the Legislature, which does not rest under that disability, to determine whether there should be a change in the law and what that change should be.

My Lords, I have indicated what is, in my view, the proper approach to the problem and do not propose to traverse the ground which has been so ably covered by the majority of the Court of Appeal and will be explored again by my noble and learned friends. The major proposition I state in the words of one of the great masters of equity. I decline, said Sir George Farwell, to accept any suggestion that the Court has an inherent jurisdiction to alter a man's will because it thinks it beneficial. It seems to me that is quite impossible. It should then be asked what are the exceptions to this rule. They seem to me to be reasonably clearly defined. There is no doubt that the Chancellor (whether by virtue of the paternal power or in the execution of a trust, it matters not) had and exercised the jurisdiction to change the nature of an infant's property from real to personal estate and vice versa, though this jurisdiction was generally so exercised as to preserve rights of testamentary disposition and of succession. Equally, there is no doubt that from an early date the Court assumed the power, sometimes for that purpose ignoring the direction of a settlor, to provide maintenance for an infant, and, rarely, for an adult, beneficiary. So, too, the Court had power in the administration of trust property to direct that by way of salvage some transaction unauthorised by the trust instrument should be carried out. Nothing is more significant than the repeated assertions by the Court that mere expediency was not enough to found the jurisdiction.

Lastly, and I can find no other than these four categories, the Court had power to sanction a compromise by an infant in a suit to which that infant was a party by next friend or guardian ad litem. This jurisdiction, it may be noted, is exercisable alike in the Queen's Bench Division and the Chancery Division and whether or not the Court is in course of executing a trust.

This brings me to the question which alone presents any difficulty in this case. It is whether this fourth

category, which I may call the compromise category, should be extended to cover cases in which there is no real dispute as to rights and, therefore, no compromise, but it is sought by way of bargain between the beneficiaries to rearrange the beneficial interests under the trust instrument and to bind infants and unborn persons to the bargain by order of the Court.

My Lords, I find myself faced at once with a difficulty which I do not see my way to overcome. For though I am not as a rule impressed byan argument about the difficulty of drawing the line since I remember the answer of a great Judge that, though he knew not when day ended and night began, he knew that midday was day and midnight was night, yet in the present case it appears to me chat to accept this extension in any degree is to concede exactly what has been denied. It is the function of the Court to execute a trust, to see that the trustees do their duty and to protect them if they do it, to direct them if they are in doubt and, if they do wrong, to penalise them. It is not the function of the Court to alter a trust because alteration is thought to be advantageous to an infant beneficiary. It was, I thought, significant that learned counsel was driven to the admission that since the benefit of the infant was the test, the Court had the power, though in its discretion it might not use it, to override the wishes of a living and expostulating settlor, if it assumed to know better than he what was beneficial for the infant. This would appear to me a strange way for a court of conscience to execute a trust. If then the Court has not, as I hold it has not, power to alter or rearrange the trusts of a trust instrument, except within the limits which I have defined, I am unable to see how that jurisdiction can be conferred by pleading that the alteration is but a little one.

It remains to say a few words on the authorities. Counsel have not cited, and I have not found, any case before the twentieth century in which the Court has given to the term "compromise" a meaning which it does not legitimately bear and sanctioned an alteration of trusts where no dispute existed. Two cases were brought to your Lordships' notice which occurred in the early years of this century. One of them, re Wells, a decision of Farwell, J., does not, I think, upon examination support the extension of the jurisdiction. I will not anticipate what my noble and learned friend has to say about it. I cannot think that it weighs heavily in the scales against the emphatic views elsewhere expressed by the same learned Judge. The other case, re Trenchard, a decision of Buckley, J., is more difficult to explain. I should myself regard it as an isolated case in which the Court went further than it had hitherto done in giving to the word " compromise an unnatural meaning and to itself a jurisdiction never before exercised. After these two cases, there appears to have been no case in which the limits of the jurisdiction have been discussed until the present case and two others with it, which are not the subject of appeal, came before the Court. But it seems that Judges of the Chancery Division have in recent years entertained jurisdiction to make orders in Chambers sanctioning on behalf of infant beneficiaries bargains or arrangements which involved the alteration of trusts but did not arise out of any dispute as to rights which it was expedient to compromise; just such orders, in fact, as that which is under consideration today. In the reported cases, re Duke of Leeds in 1947 and re Lucas in the same year, there is a clear indication of its being done and learned counsel assured us that it was done. But neither in these cases nor in other unreported cases in which a similar course was adopted. does there appear to have been any argument. It is, moreover, clear from the orders made by Harman, J., in the present case and by Roxburgh, J., in the related cases of re Downshire and re Blackwell, that there was in the year 1952 no generally accepted doctrine on the question. Nor, though I am told that I myself made such an order when I was a Judge of the High Court, would I assent of my own recollection to the view that this jurisdiction was at any time during my life at the Bar or on the Bench generally regarded as belonging to the Court. But this sort of recollection is necessarily fallible, and I would rather say that there is nothing in the reported cases of the last fifty years to show that there is now vested in the Court a jurisdiction which it had formerly disclaimed.

This appeal must accordingly, in my view, be dismissed. Your Lordships will think it proper that the costs of the Appellants and Respondents should be paid out of the trust funds.

I cannot, my Lords, conclude without expressing to Mr. Buckley the gratitude of the House for the very able argument which as amicus curie he addressed to us.

Lord Oaksey

MY LORDS,

My experience in the exercise of its jurisdiction by the Court of Chancery in the administration of trusts is so limited that I am not prepared to differ from the Opinion about to be expressed by my noble and learned friend, Lord Morton of Henryton.

I must confess, however, that I only agree with the greatest hesitation.

The general rule is said to be that the Court must see that the trusts are executed, but it is conceded that the Court has no power to insist upon the execution of the trusts if the cancellation of the settlement is desired by all the parties if they are sui juris and the property can then be resettled upon altered trusts. Yet where infants are concerned the Court cannot, it appears, sanction any alteration of the trusts under the general rule although the interests of the infants appear to demand the alteration.

Lord Morton of Henryton

MY LORDS,

The case which is the subject of the present appeal is one of three cases which came before Judges of the Chancery Division at the end of July in the year 1952. The other two are re Downshire's Settled Estates [1952] 2 A.E.R. 603 and re Blackwells Settlement [1952] 2 A.E.R. 647. These three cases differed to some extent in their facts, but in each of them the Court was asked to alter the trusts of a settlement, and in each of them the reason for the application was the same. The trustees and the adult beneficiaries realised that if the trusts of the settlement remained unaltered, the burden of taxation would be very heavy, whereas if the trusts were altered in certain respects that burden would or might be greatly reduced. They therefore applied to the Court for an order sanctioning a scheme carrying out these alterations, on the ground that the adult parties approved the scheme and that it was for the benefit of the infant beneficiaries and of any after-born beneficiaries.

The present case, Re Chapman, came before Harman, J. in Chambers on the 28th July, 1952, and he dismissed the application. The learned Judge did not deliver a formal judgment, but it is agreed that he took the view that he had no jurisdiction to make the order which was sought.

On the same day Roxburgh. J. had to consider the case of re Downshire. In that case the Court was asked to sanction the scheme either under its general jurisdiction or under section 64 (1) of the Settled Land Act, 1925. Argument was heard in Chambers, but judgment was delivered in open Court on 30th July. The learned Judge reviewed certain authorities and concluded as follows:—

I hold that the transactions involved in this scheme amount in substance to a re-writing of the trusts, or a substantial part thereof, or to directions to administer the trust property on the footing that new trusts have been declared and old trusts have been struck out or varied, and the admitted purpose of the scheme is not to solve any administrative problem but to rearrange beneficial interests to greater advantage. Such proposals fall, in my judgment, outside the scope of the Court's ' extraordinary ' jurisdiction.

He held also that the proposals were outside the ambit of section 64 of the Settled Land Act, 1925, and section 57 of the Trustee Act, 1925.

Next day Roxburgh, J. gave judgment in open Court in re Blackwell, which had also been argued in Chambers. In that case the settlement was of personalty, and the general jurisdiction and section 57 of the Trustee Act, 1925, were relied upon. The learned Judge said: This scheme, in my judgment, proposes a much less drastic re-settlement than the scheme in re Downshire but my conclusions are the same."

The Applicants appealed in all three cases, and as in none of the cases was there any person or class of

persons concerned to argue against the Applicants' contentions, the Court of Appeal thought it proper to suggest that counsel should be instructed on behalf of the Attorney-General to assist the Court as amicus curiae. Mr. Buckley appeared in response to that suggestion, both in the Court of Appeal and in this House, and has rendered very valuable assistance.

The Court of Appeal allowed the appeals in re Downshire and re Blackwell but by a majority (the Master of the Rolls and Romer, L.J.) they dismissed the appeal in re Chapman. Denning, L.J. would have allowed the appeal in all three cases. The present appeal relates only to the case of re Chapman, but I have found it convenient to state the history of all three cases, for reasons which will appear later.

The application now before your Lordships' House relates to three separate settlements. The first of these settlements is dated the 15th March, 1944, and is hereafter referred to as " the 1944 Settlement". The settlors were Col. Robert Chapman and his wife (now Sir Robert and Lady Chapman). Clauses 2, 3 and 4 of the 1944 Settlement are as follows: -

2. The trustees shall stand possessed of the trust premises (subject to clauses 3 and 4 following) for all or any the child or children of the settlors' son Robert Macgowan Chapman who shall attain the age of twenty-one years or die under that age leaving issue and if more than one in equal shares as tenants in common.

3. Provided always that until the youngest child of the said Robert Macgowan Chapman shall have attained the age of twenty-five years if that event shall happen within twenty-one years from the date hereof or until the expiration of twenty-one years from the death of the survivor of the settlors if the youngest surviving child of the said Robert Macgowan Chapman shall not then have attained the age of twenty-five years the trustees shall retain the trust premises and shall apply such part as they in their discretion shall think fit of the income thereof for or towards the common maintenance education or other benefits of the children of the said Robert Macgowan Chapman for the time being living whether minors or adults or for or towards the maintenance education or other benefit of any one or more of them to the exclusion of the other or others and shall (subject as hereinafter mentioned) accumulate the surplus of such income until the time for distribution by investing the same and the resulting income thereof in any investments hereby authorised in augmentation of the capital of the trust premises to be held upon the same trusts as the original trust premises but so that the trustees may apply the accumulations of any preceding year or years in or towards the maintenance education or benefit of all or any of the said children in the same manner as such accumulations might have been applied had they been income arising from the original trust funds in the then current year. Provided always that after each child of the said Robert Macgowan Chapman has attained his or her majority the surplus income of his share in the trust premises not expended by virtue of the foregoing powers of this clause shall not be accumulated but shall be paid to such child.

4. Provided also that the trustees may at any time with the consent in writing of the Settlors raise any part or parts not exceeding in the whole one half of the then expectant or presumptive or vested share of any child whether minor or adult of the said Robert Macgowan Chapman in the trust premises under the trust hereinbefore contained and pay or apply the same to him or her or for his or her advancement or otherwise for his or her exclusive benefit in such manner as the trustees shall think fit and as to the part or parts so raised the maintenance and other trusts of the last preceding clause shall cease to be applicable and no interest on any such advance shall be charged to any child so advanced in the accounts of die trust.”

The remaining clauses of the Settlement were administrative and are not relevant for the purposes of this appeal.

By the second settlement, dated the 8th February, 1950, and hereafter referred to as the 1950 Settlement, Lady Chapman settled certain further funds on substantially the same trusts for the benefit of Mr. Robert Macgowan Chapman's children as those declared by the 1944 Settlement. In particular the provisions for common maintenance and accumulation contained in clause 3 of the 1944 Settlement were repeated by clause 4 of the 1950 Settlement save that the reference in the former clause to the expiration of 21 years from

the death of the survivor of the settlors was altered in the latter clause to the expiration of 21 years from the death of Lady Chapman.

By the third settlement, dated the 10th February, 1950 (hereafter referred to as " the Nicholas Settlement " and made upon the marriage of Henry James Nicholas Chapman with Anne Barbara Croft), Lady Chapman settled certain funds upon trusts for the benefit of the children of that marriage and of the husband and the wife or (if none of such children attained a vested interest) then upon similar trusts for the benefit of the children of Nicholas by any subsequent marriage, and of Nicholas and any subsequent wife, and it was provided (clause 4) that in the event of the determination or failure of such trusts the trustees should pay over the trust funds (subject as therein mentioned) to the trustees of the 1950 Settlement to be held by them upon the trusts of that Settlement.

Mr. Robert Macgowan Chapman (who is the son of Sir Robert and Lady Chapman) has been married once, namely, to his present wife, Barbara May Chapman, and there have been three children of the marriage, namely, the Defendants David Robert Macgowan Chapman, who was born on the 16th December, 1941, Peter Stuart Chapman, who was born on the 24th August, 1944, and Elizabeth Mary Chapman, who was born on the 11th May, 1946. There has been no issue as yet of the marriage between Mr. Henry James Nicholas Chapman (who is also a son of Sir Robert and Lady Chapman) and his wife Anne Barbara.

As at the 24th March, 1952. the estimated values of the funds comprised in the three Settlements were respectively as follows:—The 1944 Settlement 43.000, of which 27.700 was settled by Sir Robert, and 15,600 by Lady Chapman; the 1950 Settlement 14,700; and the Nicholas Settlement 19.600. By reason of the discretionary trusts for the common maintenance of Mr. Robert Macgowan Chapman's children contained respectively in clause 3 of the 1944 Settlement and clause 4 of the 1950 Settlement the trustees of those Settlements were advised that, except in certain unlikely events, a claim for estate duty would arise in respect of the funds comprised in the former Settlement on the death of the survivor of Sir Robert (now aged 72) and Lady Chapman (now aged 65) and in respect of the funds comprised in the latter Settlement upon the death of Lady Chapman. Further, the Trustees of the Nicholas Settlement were advised that if the substitutive limitation contained in that Settlement, and before referred to, is valid and should become effective, a claim for estate duty will arise in respect of their funds by reason of that limitation. If the present rates of estate duty remain unchanged it is estimated that nearly 30,000 will be exigible for duty in respect of the three trust funds whether Sir Robert survives or predeceases Lady Chapman.

In these circumstances a scheme of arrangement was prepared the object of which was to avoid the expected claims for duty on the deaths of Sir Robert and Lady Chapman. This object could only be achieved by freeing the 1944 and 1950 Settlement Funds from the provisions for common maintenance contained in clauses 3 and 4 of those Settlements respectively. It was accordingly proposed that the trustees of those Settlements should, with the sanction of the Court, advance their respective funds to the trustees of a new Settlement which was to be entered into containing similar trusts, but omitting those provisions; and that the trustees of the Nicholas Settlement should, on the failure of the trusts therein contained for the benefit of Nicholas Chapman and his present and any future wife and issue similarly transfer their fund to the trustees of the proposed new Settlement to be held upon the trusts thereof.

To the above statement of the facts (which is taken in substance from the majority judgment in the Court of Appeal) I would add that in this House counsel asked for an order in somewhat different terms, the effect being that the trusts declared by clause 3 of the 1944 Settlement and clause 4 of the 1950 Settlement should no longer have any operation.

My Lords, the first question which arises is solely one of jurisdiction. and may be stated thus—Had Harman, J. jurisdiction to destroy the trusts contained in clause 3 of the 1944 settlement and the similar trusts created by clause 4 of the 1950 settlement, if he came to the conclusion that the elimination of these trusts would result in benefit to the infant beneficiaries and to any after-born beneficiaries? For the sake of brevity I shall address

my observations only to the case of the 1944 Settlement, since precisely similar considerations will apply to the 1950 Settlement.

It is common ground that the discretionary trusts contained in clause 3 of the 1944 Settlement are in no way objectionable in themselves, but I shall assume, for the purposes of this judgment, that their elimination would be beneficial to all parties concerned, by reason of the relevant taxing provisions.

Mr. Neville Gray for the Appellant trustees and Mr. Russell for the Respondents, three of whom are infants, invite your Lordships to answer the question already posed in the affirmative. Mr. Buckley, as amicus curiae has put forward, for the assistance of this House, certain reasons why it should be answered in the negative. Mr. Gray first contended that the Court of Chancery, and its successor the Chancery Division of the High Court of Justice, has had for many years an inherent jurisdiction to make such an order as is sought in the present case. The same argument was advanced in the Court of Appeal and was stated in the majority judgment as follows:-

It was the argument of the learned Counsel for all the Appellants (founded on Lord Chancellor Jeffreys' case, Earl of Winchelsea v. Norcliffe, 1 Vernon, page 435, and other early cases, including Pierson v. Shore, 1 Atkyn. page 480, before Lord Chancellor Hardwicke and Inwood v. Twyne, Ambler, page 417. before Lord Chancellor Northington), that the jurisdiction of the Court to modify or vary trusts and to direct the trustees accordingly was unlimited provided (1) that all persons interested who were sui juris assented and (2) that it was clearly shown to be for the advantage or convenience of all persons interested who were not sui juris including persons unborn or not presently ascertainable: in other words, that the Court has unlimited jurisdiction in relation to the property of infants, including the beneficial interests of infants and unborn cestuisque trust under a settlement, and will exercise that jurisdiction so as to secure any benefit or advantage for the infants or unborn persons which they could have themselves secured had they been in esse and sui juris, even to the extent of sanctioning a departure from the beneficial trusts of the trust instrument from which the interests in question are derived.

The majority rejected this argument, but Denning, L.J. accepted it. My Lords, on this point I find myself in complete agreement with the majority. They expressed their conclusion in the following language, which I would desire to adopt as my own: -

In our judgment, such a broad and general jurisdiction is inconsistent with the two decisions of this Court in 1901 and 1903 never so far as we are aware subsequently qualified or criticised, namely. Re New ([1901] 2 Chancery, page 534) and Re Tollemache (| 1903] 1 Chancery, page 457) . . . The general rule … is that the Court will give effect, as it requires the trustees themselves to do, to the intentions of a settlor as expressed in .the trust instrument and has not arrogated to itself any overriding power to disregard or re-write the trusts (See, for example, D'Eyncourt v. Gregory, 3 Chancery Division, page 635; Johnstone v. Baber, 8 Beavan, page 233). There have been cases in which the Court has made Orders which did undoubtedly result in a departure from the trusts declared by the settlor; in our opinion, however, these cases did not establish new rules but only exceptions to the general rule.

Mr. Gray contended that the cases which the Court of Appeal regarded as exceptions were really examples of the unlimited jurisdiction which he sought to establish. I call it unlimited jurisdiction, because Mr. Gray set no limit to it, provided only that the two elements already mentioned are present. It is necessary, therefore, to examine these so-called examples in some detail. Mr. Gray grouped them under four heads—

1. Cases in which the Court has effected changes in the nature of an infant's property, e.g. by directing investment of his personality in the purchase of freeholds:

2. Cases in which the Court has allowed the trustees of settled property to enter into some business transaction which was not authorised by the settlement:

3. Cases in which the Court has allowed maintenance out of income which the settlor or testator directed to be accumulated:

4. Cases in which the Court has approved a compromise on behalf of infants and possible after-born beneficiaries.

As to head (a). In my view these cases in no way assist the argument now under consideration. It is self-evident that a change in the nature of property to which an infant is absolutely entitled causes no change in the infant's beneficial interest, and it is noteworthy that even in such cases the Court usually so framed its order that the infant's right to make a will during infancy in the case of personalty, and the rights of his heir to take the realty if the infant died under the age of 21, were carefully safeguarded. Some earlier instances of this exercise of the Court's paternal jurisdiction are Earl of Winchelsea v. Norcliffe (1686) supra, Pierson v. Shore (1739) supra. Bridges v. Bridges (1752) footnote in 12 A.C. at p. 693, Inwood v. Twyne (1762) supra, Ashburton v. Ashburton (1801) 6 Vesey, 6.

Even this limited jurisdiction was recognised as being of an exceptional nature in Re Jackson (1882) 21 Ch. D. 786; see also Glover v. Barlow reported in a footnote to that case.

A similar jurisdiction was exercised in the case of lunatics.

As to head (b). The leading case under this head is Re New [1901] 2Ch. 534. In that case the Court of Appeal authorised the trustees of three separate trust instruments to concur in a shareholders' scheme for the reconstruction of a prosperous limited company, shares in which, settled by the settlor or testator in each case, had become vested in the trustees, it being proposed that all the shareholders in the existing company should exchange their shares, all of which were fully paid, for more realisable shares (fully paid) and debentures in the proposed new or reconstructed company. The evidence showed that the scheme would be greatly to the advantage of all parties interested under the several trusts, including infants and unborn persons. In one of the three cases the trustees had power, under the trust instrument, to invest in shares or debentures of such a company as the proposed new company. In the two other cases, as the trustees had no such power, the Court put them on an undertaking to apply for leave to retain the shares and debentures they would obtain under the scheme, if they desired to retain them beyond one year from the time the reconstruction should be carried into effect.

Romer L.J. in delivering the judgment of the Court said: As a rule, the Court has no jurisdiction to give, and will not give, its sanction to the performance by trustees of acts with reference to the trust estate which are not, on the face of the instrument creating the trust, authorised by its terms. The cases of In re Crawshay. decided by North J., and In re Morrison, decided by Buckley J., are instances where the Court was asked to sanction steps to be taken by trustees which it thought unjustifiable, and which it declared it had no jurisdiction to authorise. But in the management of a trust estate, and especially where that estate consists of a business or shares in a mercantile company, it not infrequently happens that some peculiar state of circumstances arises for which provision is not expressly made by the trust instrument, and which renders it most desirable, and it may be even essential, for the benefit of the estate and in the interest of allthe cestuis que trust, that certain acts should be done by the trustees which in ordinary circumstances they would have no power to do. In a case of this kind, which may reasonably be supposed to be one not foreseen or anticipated by the author of the trust, where the trustees are embarrassed by the emergency that has arisen and the duty cast upon them to do what is best for the estate, and the consent of all the beneficiaries cannot be obtained by reason of some of them not being sui juris or in existence, then it may be right for the Court, and the Court in a proper case would have jurisdiction, to sanction on behalf of all concerned such acts on behalf of the trustees as we have above referred to. By way merely of illustration, we may take the case where a testator has declared that some property of his shall be sold at a particular time after his death, and then, owing to unforeseen change cf circumstances since the testator's death, when the time for sale arrives it is found that to sell at that precise time would be ruinous Do the estate, and that it is necessary or right to postpone the sale for a short time in

order to effect a proper sale: in such a case the Court would have jurisdiction to authorize, and would authorize, the trustees to postpone the sale for a reasonable time.

It is a matter of common knowledge that the jurisdiction we have been referring to, which is only part of the general administrative jurisdiction of the Court, has been constantly exercised, chiefly at chambers. Of course, the jurisdiction is one to be exercised with great caution, and the Court will take care not to strain its powers. It is impossible, and no attempt ought to be made, to state or define all the circumstances under which, or the extent to which, the Court will exercise the jurisdiction ; but it need scarcely be said that the Court will not be justified in sanctioning every act desired by trustees and beneficiaries merely because it may appear beneficial to the estate ; and certainly the Court will not be disposed to sanction transactions of a speculative or risky character. But each case brought before the Court must be considered and dealt with according to its special circumstances."

My Lords, surely the passage just quoted tells strongly against the argument now under consideration. The opening sentence states the general rule in the plainest terms and clearly recognises that even the limited and exceptional jurisdiction to sanction transactions in the nature of " salvage'' of the trust property must be exercised with great caution. The Court was, of course, only dealing with a proposed investment to be made by trustees, and the beneficial trusts were in no way altered ; but surely if the Court had had the wide general power to alter trusts, for which counsel contend, the whole trend of the judgment would have been different.

Two years later Kekewich, J. and the Court of Appeal had to consider the case of Re Tollemache [1903] 1 Ch. 457. In that case the trustees sought power to acquire a mortgage of the interests of the tenant for life. This transaction was not within the investments authorised by the settlement, but it was pointed out that it would increase the income of the tenant for life and would not injure the remaindermen. Kekewich, J. refused the application and carefully analysed the relevant authorities as to jurisdiction, including Re New. At p. 462, after citing certain cases, he observed : The above are illustrations of the exercise by the Court, justified by the practical necessity of the case, of jurisdiction going beyond the mere administration of trusts according to the terms of the instruments creating them. Others might be given : the applications or rather the circumstances inducing them exhibiting large varieties, but those mentioned suffice to explain the scope of the practice of the Court. There might be added illustrations of the refusal of the Court to exercise this extraordinary jurisdiction, but there is no occasion. All the cases of refusal may be grouped under one of two classes. Either, notwithstanding the advantage actual and prospective of what is proposed to be done, there is no urgency for it, and the existing state of things may without great mischief be allowed to remain, or the terms on which the advantage can be gained are such that the Court would by accepting them create a new trust in lieu of that which it is administering.

The judgments of the Court of Appeal are in [1903] 1 Ch. 956. They are as follows: —

Lord Justice Vaughan Williams: It is admitted that the Applicant cannot succeed unless she can bring herself within In re New. Putting that case shortly, it is this—that a case may arise in which, in the course of the administration of an estate, such an emergency may occur that it must be dealt with at once; but it cannot be said that there is any such emergency here. The appeal must, therefore, be dismissed, and with costs. Lord Justice Romer: I agree. In re New shews how far the Court will go, and beyond what point it will not go. Lord Justice Cozens-Hardy: I agree. I will only add that, in my opinion, In re New constitutes the high-water mark of the exercise by the Court of its extraordinary jurisdiction in relation to trusts.

To quote again the majority judgment in the present case:

These Judgments are, in our view, consistent and only consistent with the conclusion we have expressed above, and are irreconcilable with the broad general proposition for which Counsel for the Appellants have contended. It is to be noted that Lord Justice Romer, who had delivered the Judgment in Re New, was a member of the Court in Re Tollemache. And if, in view of the arguments now ,put forward, the present members of the Court of Appeal wish that he had more precisely stated the limits of the jurisdiction which he

plainly had in mind, he indicated no dissent from or qualification of the other Judgments of the Court or the Judgment of Mr. Justice Kekewich.

My Lords, in my view the cases just mentioned, exemplifying the exceptional jurisdiction which is exercised for the sake of salvage of the trust property, far from supporting the existence of a general jurisdiction in the Court to alter trusts, go far to negative it.

As to head (c). It is said, and said truly, that in some cases under this head the Court's order resulted in an alteration of beneficial interests, since income was applied in maintaining beneficiaries, notwithstanding that the testator or settlor had directed that it should be accumulated or applied in reduction of incumbrances. Some instances are Revel v. Watkinson (1748) 1 Vesey Senior. 93, Cavendish v. Mercer (1776) 5 Vesey. 195, footnote, Greenwell v. Greenwell (1800) 5 Vesey, 194. Emit v. Barlow (1807) 14 Vesey, 202. Haley v. Bannister, 4 Maddocks 279. Havelockv. Havelock(1881) 17 Ch. D. 807. This jurisdiction is too well established to be doubted to-day. It was explained as follows by Pearson, J. in Re Collins 32 Ch. D. 232: The ground of the decision —that is, the decision in Havelock—" I take to be, that where a testator has made a provision for a family, using that word in the ordinary sense in which we take the word, that is the children of a particular stirps in succession or otherwise, but has postponed the enjoyment, either for a particular purpose or generally for the increase of the estate, it is assumed that he did not intend that these children should be left unprovided for, or in a state of such moderate means that they should not be educated properly for the position and fortune which he designs them to have, and the Court has accordingly found from the earliest time that where an heir-at-law is unprovided for, maintenance ought to be provided for him.

A somewhat similar explanation was given by Farwell, J. in Re Walker [1901] 1 Oh. 879 at 885. It is clear that neither of these learned judges regarded the maintenance cases as affording any evidence that the Court had an inherent jurisdiction to alter beneficial trusts in any way it pleased. To my mind they must be regarded as an exception, and I think the only real exception, to the general rule, as stated by Romer, LJ. in Re New in the words already quoted and by Harwell, J. in Re Walker supra when he said: I decline to accept any suggestion that the Court has an inherent jurisdiction to alter a man's Will because it thinks it beneficial. It seems to me that is quite impossible.

Striking instances of cases which negative the existence of the alleged unlimited jurisdiction are Re Crawshay (1888) 60 L.T. 357, Re Morrison (Buckley, J.) [1901] 1 Ch.701, and Re Montagu (CA.) [1897] 2 Ch. 8. In thefirst of these cases North, J. said " I should not be administering the trusts created by the testator if I consented to this scheme. I should be altering his trusts and substituting something quite outside the will. On the assumption that the scheme would be beneficial to the estate, I cannot decide that I have jurisdiction to alter it. In the last-mentioned case the Court of Appeal held that it had no jurisdiction to allow the trustees of a settlement to raise money by mortgage of the settled estate and to apply it in pulling down and rebuilding some of the houses on the property. Lindley, L.J. said: " We none of us see our way to hold that there is jurisdiction to make an order in this case. It is very desirable that the Court should have jurisdiction to deal with such a case ; but Parliament has never gone so far as to give it that jurisdiction. No doubt it would be a judicious thing to do what is wanted in this case, and if the persons interested were all ascertained and of age, "they would probably concur, and then it might be done; but they are not all ascertained nor of full age ; and unless the Court can authorise the trustees to do it, it cannot be done."

Lopes, L.J. said: " I have no doubt that what is proposed is beneficial, and would increase both the income and the capital value of the property. The question is whether the Court has jurisdiction to sanction it. There is no provision in the settlement which would authorise the works in question, nor do they fall within any of the improvements sanctioned by the Settled Land Acts. It is urged that the Court, having control over trust property, can sanction them, as it would be vastly for the benefit of the persons interested that it should do so. That is not enough. If the buildings were falling down it would be a case of actual salvage and would stand differently. Even in cases of repairs the Court has been very careful in the exercise of its jurisdiction. In the case of In re Jackson, Kay. J., in dealing with a case of repairs, said: ' I think that this jurisdiction should be '

jealously exercised, and only in cases which amount to actual salvage.' The present cannot be said to be a case of actual salvage, and the learned judge was right in refusing to exercise a jurisdiction which he in fact did not possess.

As to head (d). There are, of course, many cases to be found in the reports in which the Court of Chancery, and its successor the Chancery Division, have approved compromises of disputed rights on behalf of infants interested under a will or settlement and on behalf also of possible after-born beneficiaries. In my opinion these cases in no way support the existence of the unlimited jurisdiction for which Mr. Gray contends. Where rights are in dispute, and the Court approves a compromise, it is not altering the trusts, for the trusts are, ex hypothesi, still in doubt and unascertained.

For these reasons, I would reject Mr. Gray's contention that the Court has the unlimited jurisdiction already described. It now becomes necessary to examine a further argument, of far-reaching importance, which was fully developed by Mr. Russell. This argument may be summarised as follows:-

Let it be assumed, for the purposes of this argument, that the Court of Appeal rightly rejected our submission as to the general jurisdiction of the Court of Chancery, and its successor the Chancery Division to modify or vary trusts. Even on that assumption the present scheme can be sanctioned as being a ' compromise'. There is no doubt that in cases where the respective rights of persons interested under a will or settlement were in dispute, the Court of Chancery down to 1873, and the Chancery Division since the passing of the Judicature Act, has had jurisdiction to approve a compromise on behalf of infants and unborn persons. There has never been any logical reason why this jurisdiction should not extend to alterations of beneficial interests under a trust, if such alterations are desired by the adult beneficiaries and are for the benefit of infants and any after-born beneficiaries, and it has been so extended on various occasions during the last fifty years. Arrangements of this kind may not be compromises in the strict sense, if no rights are in dispute, but they are compromises ' in the broader sense of the word '-—to quote the majority judgment in the Court of Appeal. The majority had no good reason for rejecting the arrangement in Re Chapman if they had jurisdiction to sanction the arrangements in Re Downshire and Re Blackwell. No one of them is a compromise of disputed rights ; each one results in an alteration or rearrangement of beneficial interests under a settlement, and each one is made for the same reason—the desire to reduce or avoid taxation."

As this argument is based partly on the reasoning of the Master of the Rolls and Romer, L.J. in their joint judgment, and partly upon the fact that the Court of Appeal was unanimous in sanctioning the schemes put forward in Downshire and Blackwell. it is necessary to set out in some detail the course taken in the joint judgment. After rejecting the argument as to the unlimited jurisdiction, and referring to the maintenance cases as an exception to the rule that the Court cannot alter or vary trusts, the joint judgment proceeded as follows: —

It must also now be taken, in our judgment (at any rate since the decision of Re Trenchant fifty years ago, [1902], 1 Ch. 378) that the Court has a further power and jurisdiction ... to approve, on behalf of persons interested under the trust who are under a disability (particularly infants) and persons who may hereafter become interested, compromises proposed by or between persons beneficially interested under the trust who are sui juris, and to direct and protect trustees accordingly; and the word 'compromise' should not be narrowly construed so as to be confined to ' compromises' of disputed rights.

It is to be noted that it is not stated at this point how far the word compromise is to extend.

The Master of the Rolls and Romer. L.J. went on to consider Re Trenchard and Re Wells [1903] 1 Ch.848. I shall consider these cases later. They then turned to a consideration of section 57 of the Trustee Act. 1925. They thought that that section afforded the Appellants no assistance, and in this House counsel have stated that they could not contend that that section had any application to the present case. After making some observations on section 64 of the Settled Land Act, 1925, the majority then considered the case of Re

Downshire and said: In our judgment the present scheme does fall fairly within the ambit of the Court's jurisdiction to approve compromises (used in the broad sense of the word) which is illustrated in Mr. Justice Buckley's decision in Re Trenchard." Later they observed: ... we think that . . . the proposals may fairly and properly be regarded as constituting a compromise in the broader sense of the word in which it was used in Re Trenchard." They then turned to the case now under appeal, and expressed their views in language which must be quoted in full.

The only possible way, therefore, as it seems to us, that the scheme could be brought within the inherent jurisdiction of the Court is by showing that it involves a compromise or composition of beneficial interests to which the principle exemplified in In Re Trenchard can properly be applied. We are unable, however, to see how any such compromise or composition arises. Certainly there is no question of compromise in the strict sense, for none of the relevant beneficial interests gives rise to any question of construction or is otherwise in dispute. It is suggested, however, that something in the nature of a composition of the rights of Mr. Macgowan Chapman's children is to be found in the elimination, during the lifetime of the settlors,"—(the last six words should, I think, read "during the period stated in the settlements ")—" of the expectation that each may have of receiving more or less than the others and in substituting equal rights among the class, as between themselves, in its place. We think that there are two objections to the acceptance of this view. First, although it is true that the scheme if sanctioned would have the result described we cannot regard that result as constituting a composition of rights in any real sense at all. It is nothing more than a rearrangement of beneficial interests which, to the extent that it might prove to be of advantage to some members of the class, would correspondingly operate to the prejudice of others. It cannot, therefore, be compared to a proposal under which, for example, thecontingent interests of all of the members of a class in a fund are converted into vested interests in a smaller fund, for in such a case the proposal, if beneficial to one member of the class, would of necessity be beneficial to them all. Secondly, it is impossible to say, on the facts of the case, that the rights and interests of the children under the existing discretionary trusts are prejudicial to them and should therefore be eliminated. Both of the Settlements were executed within the last 10 years and the trusts in question were presumably inserted therein because the settlors thought that their introduction would be of advantage to the children; they may well have thought, for example, that some of the children might need more for maintenance than others and accordingly they empowered the trustees to provide for this if occasion should require. Nothing has since transpired to show that their views upon this matter were wrong. All that has transpired is that the manner in which the discretionary trusts were framed may attract an unexpected claim for death duties. The object of the scheme, accordingly, is not to compound the interests which the children have under the discretionary trust but to avoid the claim for duties; and such avoidance does not, and cannot, be regarded as a composition of rights for the purpose of the second exception to the rule. Moreover, although, as we have previously said, the fact that a scheme will result in the saving of death duties or income tax is, in itself, no ground for its rejection, the acceptance of the scheme now under consideration might well be followed by the presentation of further proposals of a similar character whenever it should be considered desirable in the future to avoid or mitigate the effect of such changes as may occur hereafter in the existing fiscal legislation. We would point out, therefore, that it is no part of the functions of Her Majesty's Courts to recast settlements from time to time merely with a view to tax avoidance even if they had the power to do so which, in our opinion, they have not.

It follows from what we have said that the scheme proposed is in truth what it appears on its face to be. namely, the destruction of trusts expressly declared, and that inasmuch as it cannot be brought within the first exception to the general rule and cannot, under the guise of a composition, invoke the second exception, the rule applies ; and the Court accordingly has no jurisdiction to authorise the trustees to carry it into effect. This appeal, in our judgment, must therefore fail.

To complete the picture, I add that the majority allowed the appeal in Re Blackwell, saying: " In our judgment, therefore, the scheme is of a nature which it is competent for the Court to sanction in exercise of its jurisdiction to approve compromises in the wide sense of that word which we have already indicated.

My Lords, I have set out this lengthy survey of the majority judgment because I could devise no other satisfactory way of approaching the argument addressed to your Lordships by Mr. Russell, which I have already summarised.

This argument brings one face to face with the vitally important question --is it possible to draw a line at some point between the Court's undoubted jurisdiction to sanction a compromise of disputed rights, and the alleged unlimited jurisdiction to alter beneficial interests to any extent, provided that every person interested who is sui juris assents and the change is shown to be for the benefit of infants and after-born beneficiaries? I confess that I have found it impossible to draw such a line. As I have said, the Court's jurisdiction to sanction a compromise in the true sense, when the beneficial interests are in dispute, is not a jurisdiction to alter these interests, for they are still unascertained. If, however, there is no doubt as to the beneficial interests, the Court is, to my mind, exceeding its jurisdiction if it sanctions a scheme for their alteration, whether the scheme is called a compromise in the broader sense " or an arrangement or is given any other name. Mr. Russell in the course of his argument suggested that the step from the former to the latter class of case was a short one. My Lords, it may be a short step, but it is a step into a field of extremely wide extent. In my view that field was not open to the Court at the beginning of the present century and is not open now. I think that Farwell, J. (as he then was) was right when in 1901 he used the words already quoted—" I decline to accept anysuggestion that the Court has an inherent jurisdiction to alter a man's will because it thinks it beneficial. It seems to me that is quite impossible . (Re Walker [1901] 1 Ch. 879 at p. 885.) If these words are true in the case of a will, they are equally true in the case of a settlement, and in 1952 Roxburgh and Harman, J.J., in effect, adopted the words of Farwell. J. and applied them to the present day. I think these two learned Judges were right.

It follows that, in my view, the majority of the Court of Appeal were right in dismissing this appeal, but their decisions in Re Downshire and Re Blackwell went too far. The facts in these two cases are fully set out in the majority judgment and need not be repeated here. Suffice it to say that the scheme in each case involved extensive alterations of the beneficial trusts declared in settlements dated respectively 1915 and 1933 in order to reduce taxation, including in each case the release of part of the settled property from a protected life interest. In neither case was there any appeal, but I have found it necessary to express my view upon them because counsel have cited these cases as authorities, and have submitted (rightly, as I think) that the present case cannot be distinguished from them.

I must, however, examine the cases which were said to establish the jurisdiction to sanction the scheme now before your Lordships.

The first such case is Re Trenchard [1902] 1 Ch.378, and the facts must be stated somewhat fully, in view of the argument which has been based on this case. A testator who died in 1899 by clause 3 of his will gave to his wife " the use of my residence Woodville aforesaid so long as she shall desire to make it her permanent place of residence and shall remain my widow, my estate to pay all rates, taxes and outgoings in respect thereof, and to keep the house and grounds in tenantable repair. The testator gave his residuary real and personal estate to his trustees upon the usual trusts for sale and conversion and payment of debts and legacies and directed them to stand possessed of his residuary trust monies and the income thereof upon certain trusts for his children and remoter issue. He directed his trustees to postpone the sale of his Honor Oak estate (which included Woodville House) until after the death or marriage again of his wife and he empowered them from time to time as they should think fit to develop the same estate, and for that purpose to use such part of his estate as they deemed advisable.

The widow took possession of Woodville and resided there, but rinding that it was a larger house than she required and that there were difficulties connected with the management, repairs, outgoings and development of the property, she asked the trustees to come to an arrangement with her. Questions arose, and on a summons taken out by the trustees, Byrne, J. made an order declaring that the widow had the powers of a tenant for life under the Settled Land Acts and that she would not forfeit the benefits conferred

upon her by the directions in the will by selling or leasing the house under those powers. All the persons interested desired that the estate, which was freehold, should be developed for building purposes, but this could not be done so long as the widow remained in occupation of Woodville, and would be prevented if she sold Woodville in exercise of her powers as tenant for life under the Settled Land Acts. The widow estimated her interest in the rental value of Woodville, together with the rates, taxes and outgoings, at 350 a year and offered to release her claims under clause 3 of the will to the trustees in return for a fixed payment of 320 a year.

A summons was taken out to decide whether the trustees had power, with the sanction of the Court, to enter into an arrangement by way of compromise for the payment to her of a fixed annual sum in satisfaction of her claims under clause 3 of the will, and if so, that an agreement to pay her a fixed sum of 275 per annum during widowhood by way of compromise of the whole of her claims under clause 3 of the will might be approved by the Court. There were infants interested in residue and they appeared by counsel, who expressed the view that the compromise was beneficial to them. Buckley, J. (as he then was) approved the arrangement, saying: It seems to me that this is a fair compromise for all parties, and I declare that it is within the power of the trustees to enter into it, and I sanction it accordingly.

My Lords, this decision appears to me to be no more than the sanctioning by the Court of a purchase by the trustees of the widow's rights. It may be that Buckley, J. stretched the jurisdiction to approve a compromise beyond its proper limits; but I cannot regard him as claiming a new and extensive jurisdiction, the existence whereof had so recently been denied by judges of the Chancery Division and by the Court of Appeal.

The next case relied upon was Re Wells [1903] 1 Ch. 848. The facts of this case are very fully stated in the majority judgment of the Court of Appeal and need not be repeated here. I entirely accept the observations in the majority judgment on that case—" There was no rearrangement or altering of any trusts. All persons interested under the trusts of the testator's will, according to its terms, were sui juris and capable of determining the trusts. The difficulty arose solely from the fact that derivative settlements had been made by the persons contingently entitled to the corpus of the estate. No alteration was required of any of the trusts of these settlements. What was proposed was that the trustees of the derivative settlements should receive a present and certain subject matter instead of their previously existing contingent rights. In my view, Re Wells affords no support to the argument now under consideration. It was decided by Farwell, J. (as he then was) and I feel sure he did not think that in sanctioning the arrangement there proposed he was in any way departing from the views, already quoted, which he had expressed so forcibly in Re Walker.

So far as reported cases are concerned, there is a long gap between Re Wells and Re Duke of Leeds [1947] 1 Ch.525. Counsel assured us, however, that, during the intervening 44 years, orders had been made from time to time in Chambers which were similar in their effect to the orders asked for in the present case, in Re Downshire, and in Re Blackwell.

My Lords, this may well have been so, but, accepting counsel's statement. I would make the following observations. First, when judges are exercising an undoubted jurisdiction in Chambers, the manner in which they exercise it may form a useful precedent; but no judge can acquire a jurisdiction which he does not possess merely by making orders which extend beyond that jurisdiction. Secondly, it is impossible to found any proposition upon an unreported case without being aware of all the facts, the precise nature of the order made, and the arguments advanced at the hearing. It may well be that the question of jurisdiction was never brought to the minds of the judges who dealt with these matters in Chambers. I would add this—according to my recollection, which may be at fault, it was thought at one time by judges sitting in Chambers that the decision in Re New, supra, extended by section 57 of the Trustee Act, 1925, justified the making of many orders which were later considered to have been made in excess of jurisdiction. I agree with the comments upon Re New and upon section 57 which are contained in the majority judgment in the present case, and it is conceded by counsel that neither that decision nor the section can possibly justify the application now before your Lordships.

I now come to the case of Re Duke of Leeds already mentioned. In that case freehold estates comprising a number of coal mines in Yorkshire and the North Midlands had been settled by the will of a testator who died in 1927. By the Coal Act, 1938, these mines were compulsorily acquired by the National Coal Commission, the vesting date being 1st July, 1942, and the compensation therefor was duly assessed by the National Valuation Boards of each area and paid to the trustees of the will. Questions arose as to how the compensation monies should be dealt with as between the persons entitled in succession under the will, and the matter came before Jenkins. J. (as he then was). The learned Judge decided all these questions and said, at page 556 fin: "In view of the unanimity of all parties in supporting the plaintiff's contention I suggested the possibility of authorising the proposed commutation by way of compromise, if it could truly be shown to be forthe benefit of all infant or unborn or unascertained persons interested or possibly interested under the settlement. It appeared, however, that this suggestion was not acceptable, and I was asked to decide the point one way or the other as a matter of construction of the Coal Act, 1938, and in particular paragraph 21 (2). This I have accordingly done. My decision against the plaintiff's contention as a matter of legal right does not, of course, rule out the possibility of giving effect to it as a compromise or arrangement if shown to the satisfaction of the Court to fulfill the condition mentioned above.

Mr. Wolfe informs us that in fact a compromise was subsequently approved by Jenkins, J. under which, I understand, a certain lump sum was paid to the tenant for life out of the compensation monies and the balance was to be invested as capital and held on the trusts of the will. He also informed us that compromises of a similar nature were sanctioned by the Court in Re Lucas which immediately follows Re Duke of Leeds in [1947] 1 Ch.

My Lords, I should have been glad if I could have found it possible to draw some sound distinction between the two cases just mentioned and Downshire and Blackwell on the one hand, and the present application on the other. The majority in the Court of Appeal, as I understand their judgment, drew a line between schemes which involved a compromise or composition of beneficial interests", such as the schemes in Downshire and Blackwell, and schemes such as the Chapman scheme, where no such compromise or composition was involved. If such a line could be drawn, no doubt the schemes in Duke of Leeds and Lucas would fall on the right side of it. I do not, however, feel able to draw this line. I agree that there is a distinction in fact between the Chapman scheme and the schemes in Downshire and Blackwell, and this is clearly pointed out in the majority judgment. Further, I think it might be possible to find some distinction in fact between Downshire and Blackwell on the one hand and Duke of Leedsand Lucas on the other. Yet all the five cases do involve an alteration in the ascertained and undisputed beneficial interests under a settlement.

For the reasons which I have set out, I fear at too great length, I am of opinion that the Court has only claimed jurisdiction to make such an alteration in the maintenance cases already mentioned, and has frequently denied that it has such a jurisdiction in any other case. In saying this I am not overlooking the salvage cases, but they relate to administrative acts by trustees and not to alteration of beneficial interests.

I agree with the majority of the Court of Appeal in their rejection of the present application, and I cannot accept Mr. Russell's argument based on the other cases which he has cited.

My Lords, it will already be apparent why I cannot agree with the conclusions of Denning, L.J. in his dissenting judgment, but I feel bound to comment upon two passages in that judgment. Denning, L.J. quotes the following passage from the judgment of Turner, L.J. in Brooke v. Mostyn (1864, 2 DeG. J. and S. 373 at p. 415):-

That this Court has power to compromise the rights and claims of infants and persons under disabilities, when those rights and claims are merely equitable, has not been and cannot be disputed. It is a power which has continually been exercised by the Court, and results almost necessarily from the jurisdiction which the Court exercises over trustees. In the exercise of that jurisdiction the Court may in general order the trustees to deal with the trust property in whatever mode it may consider to be for the benefit of cestuisque trust who are infants or under disabilities. ... I have thought it right to make these observations, because I consider it of

great importance that no doubt should be cast upon the power of the Court. . . . The rights of infants and incapacitated persons must in many cases be sacrificed if the power be not maintained.

It is to be noted that Brooke v. Mostyn was a case of a true compromise of disputed rights, and the only question for decision was whether such a compromise could be set aside. In my view the observations just quoted, though one sentence is couched in very general terms, must be read as relating only to cases of true compromise where, to quote the first sentence.

The Court is compromising "the rights and claims of infants and persons under disabilities." Denning, L.J., goes on to say: This jurisdiction is not confined to cases where there is a dispute about the extent of the beneficial interests, nor to cases of emergency or necessity, but extends wherever there is a bargain about the beneficial interests which is for the benefit of the infants or unborn persons." In support of this observation he cites Re Trenchard, Re Wells, and the argument of Lord Parker, as junior counsel, in Re New. But, as I have already said, I cannot regard these cases as supporting the proposition.

Later, Denning, L.J., said: "The proposed scheme for the Chapman Settlement is more troublesome. We are told that the lawyer who drew up the Deed made a mistake. He did not have in mind the statutory definition about property passing ' on the death ' for the purpose of death duties: and he included a discretionary trust for common maintenance when he ought to have omitted it. He ought to have left the children to receive maintenance equally instead of giving the trustees a discretion to grant more to one than the others. It is a small mistake but it means a difference of 30,000 in death duties. The mistake cannot be remedied under the strict doctrine of rectification because it is not a mistake in expressing the settlor's intentions but only a mistake as to the legal consequences. Nevertheless I do not myself see why the mistake should not be corrected by the settlors themselves. In regard to this passage I would say first, that counsel for all parties are agreed that the wishes of the grandparents as settlors are entirely irrelevant on the question of jurisdiction. By settling the property on certain trusts they have put it out of their power to alter these trusts, however much they may wish to do so. Secondly, it is not contended by counsel that there was any mistake, in the true sense of the word, in the present case. The trusts contained in the settlement are exactly the trusts upon which the settlors intended the settled property to be held. The present application arises only by reason of the fact that it was afterwards realised that these trusts, although perfectly proper and sensible in themselves, would or might have unfortunate results as regards death duties. Lastly, the question is not whether the Court ought to have jurisdiction to alter the trusts in this case, but whether in fact it has that jurisdiction.

I would add, in amplification of remarks by the Master of the Rolls and Romer. L.J. already quoted, that if the court had power to approve, and did approve, schemes such as the present scheme, the way would be open for a most undignified game of chess between the Chancery Division and the Legislature. The alteration of one settlement for the purpose of avoiding taxation already imposed might well be followed by scores of successful applications for a similar purpose by beneficiaries under other settlements. The Legislature might then counter this move by imposing fresh taxation upon the settlements as thus altered. The beneficiaries would then troop back to the Chancery Division and say, Please alter the trusts again. You have the power, the adults desire it, and it is for the benefit of the infants to avoid this fresh taxation. The Legislature may not move again. So the game might go on, if the judges of the Chancery Division had the power which the Appellants claim for them, and if they thought it right to make the first move.

I would dismiss the appeal.

Lord Asquith of Bishopstone

MY LORDS,

In this appeal Counsel for the Appellants began by taking his stand on an ambitious general principle of law: namely, that there resided in the Court of Chancery an inherent jurisdiction to vary the trusts of a settlement

or a will, in every case in which two conditions were satisfied, viz.:

1. that all adults interested in the trust dispositions consented, and

2. that the variation was plainly for the benefit of all interested parties other than adults, viz. infants and unborn persons.

Speaking with much less familiarity with these matters than most of my noble friends, I cannot but think this principle is too broadly stated, and respectfully agree with the conclusions and reasoning of my noble and learned friends, the Lord Chancellor and Lord Morton of Henryton.

In practice, Courts of Chancery have asserted this jurisdiction mainly, if indeed not solely, in three classes of cases:

1. Where the trust dispositions have provided for accumulations of income in favour of an infant during his minority without providing for his maintenance during that period: but this provision would be stultified if the infant were not maintained while the income was accumulating. The Court has in such cases refrained from enforcing the letter of the trusts, and by authorising maintenance has saved the infant from starving while the harvest designed for him was in the course of ripening.

2. Where some event or development unforeseen, perhaps unforeseeable, and anyhow unprovided against by the settlor or testator, threatened to make shipwreck of his intentions: and it was imperative that something should be saved from the impending wreck. These are often referred to as the "salvage" cases: and many of the maintenance cases which I have classified separately could properly be subsumed under this wider class.

3. Where there has been a compromise of rights (under the Settlement or Will) which are the subject of doubt or dispute. It is then often to the interest of all interested parties, adult or infant or unborn, to have certainty substituted for doubt, even if the supersession of a dubious right by an undoubted one may be doing beneficent violence to the terms of the trust: though it is perhaps inappropriate to speak of violence to terms to which different persons attribute a different meaning. Whether there is jurisdiction to do the same in reference to rights which are not in dispute is a point which lies near the centre of the present appeal, and to which I will revert.

Leaving this last point for the time being aside, I would venture to record my view that the inherent jurisdiction of the Court of Chancery in this sphere is limited to these three classes of cases: maintenance cases. salvage cases, and " compromise " cases: and that the Court's exercise of jurisdiction in these three spheres is limited to those spheres and is not simply the exercise in particular circumstances of the far wider jurisdiction claimed for the Court by Counsel for the Appellants of a jurisdiction limited only by two conditions:

(a) consent of interested adults;

(b) benefit to interested non-adults.

If that wider principle had been valid., a formidable volume of judicial learning and forensic argument directed to the question whether the facts of a case bring it within the three privileged compartments must have been expended in vain. Why this expenditure of time and erudition if the alleged broad principle was always there, offering a short cut? Nor, speaking more generally, does English jurisprudence start from a broad principle and decide cases in accordance with its logical implications. It starts with a clean slate, scored over, in course of time, with ad hoc decisions. General rules are arrived at inductively, from the collation and comparison of these decisions: they do not pre-exist them.

Now it is argued that even if this be so, yet the third category or compartment creating jurisdiction—" compromise " —includes rearrangements of property rights or interests even where these are not in dispute.

And certain cases—In re Trenchard ([1902] 1 Ch. 378), In re Wells ([1903] 1 Ch. 848), two cases under the Coal Mines Act (Re Duke of Leeds [1947] 1 Ch. 525, and Re Lucas reported immediately after it) and the cases of Downshire and Blackwell, decided simultaneously with the present case (though in a different sense by the Court of Appeal) are prayed in aid as supporting this extension of the jurisdiction from cases of " compromise stricto sensu to quasi compromise. And it is further argued that if these cases or some ofthem attract the jurisdiction, then so does the present case. As to this latter point, though I can see differences, I cannot see any material distinction between the Downshire and Blackwell cases and the present case.

But it will be observed (1) that until the 20th century the category compromise had been construed as strictly confined to cases of disputed rights; (2) that in practice, once it is construed as including what I have termed " quasi-compromise ", there is it would seem no logical stopping point short of the broad and loose principle which was contended for by the Appellants and which, for reasons given above, seems to me untenable. None of the decisions since 1900, relied on by the Appellants, are binding on your Lord-ships' House. Some of them can, I think, be distinguished on the lines indicated by my noble and learned friend Lord Morton of Henryton. For instance, the case of In re Wells, in my view, is a very special one and does not on a true view support the Appellants' proposition. Subject to these considerations I would reassert the rule that a compromise in this connexion means a compromise in the strict sense and that the attempted creation of a category of quasi-compromise is invalid.

As to the effect more specifically of a decision in this sense on In re Trenchard (supra). In re Wells (supra) the two cases decided under the Coal Mines Act and the cases of Downshire and Blackwell, I have had the advantage of reading in advance the opinion just delivered by my noble and learned friend. Lord Morton of Henryton, and would respectfully adopt his observations. I am of opinion that the appeal should be dismissed.

Lord Cohen

MY LORDS,

I have had the advantage of reading in print the Opinion delivered by my noble and learned friend, Lord Morton of Henryton. I agree with him in rejecting the main argument advanced by Mr. Gray for the Appellants. Like him. I accept the reasons given by the majority of the Court of Appeal for rejecting that argument. In my opinion, the cases relied on by Mr. Gray are not examples of the unlimited jurisdiction for which he contends, but illustrate exceptions from the general principle that the Court will give effect, as it requires the trustees themselves to do, to the intentions of the settlor or testator as expressed in the trust instrument.

In considering those cases I will adopt the grouping made by Mr. Gray and already stated by the noble and learned Lord. I agree with his comments on the first three groups, with the reservation that I do not think that the maintenance cases are the only real exception to the rule that the Court will not alter beneficial trusts. My reasons for this reservation will appear from the observations I have to make on the scope of the exception which the Chancery Courts have adopted as regards the sanctioning of compromises on behalf of infants and possible after-born beneficiaries.

My Lords, like the majority of the Court of Appeal I think that this jurisdiction is not limited to compromises of disputed rights but extends to compromises in the wider meaning of that word, and had it not been that some of your Lordships take a different view, I should have been content to express my agreement with the reasoning of the Master of the Rolls and Romer, L.J. on this point.

Lord Morton of Henryton sums up the arguments advanced against their conclusion somewhat as follows :-

I. The Court's sanction of a compromise in the true sense, when the beneficial interests are in dispute, is not the exercise of a jurisdiction to alter those interests, for they are still unascertained.

II. Re Trenchard ([1902]) 1 Ch. 378. which is the foundation of the majority judgment of the Court of Appeal on this point, is not a case of compromise in the broad sense but is " no more than the sanctioning by the Court of a purchase by the trustees of the widow's rights.

III. It is impossible to draw a line at which the jurisdiction to sanction a compromise in the broad sense ends or, put otherwise, it is impossible to draw a line at some point between the Court's undoubted jurisdiction to sanction a compromise of disputed rights and alleged unlimited jurisdiction to alter beneficial rights to any extent provided that every person who is sui juris consents and the change is shown to be for the benefit of infants and after-born beneficiaries.

My Lords, I am not satisfied that the Court, in sanctioning a compromise in the strict sense, is not exercising a jurisdiction to alter beneficial rights. It is true that in such a case the right has not been defined, but the right of the beneficiary is a right to that to which, upon its true construction, the will or settlement entitles him. The very essence of a compromise is that it may give each party something other than that which the will or settlement would, on its true construction, confer on him.

Nor am I able to accept the view that Re Trenchard (supra) involved nothing more than the purchase by the trustees of the widow's interest. Under clause 3 of the testator's will she was entitled only (a) to the use of the testator's residence so long as she desired to make it her permanent place of residence and remained the testator's widow, and (b) during that time to have the house and grounds kept up at the expense of the estate. If she ceased to reside, she would forfeit those benefits, the value of the tenantable repair provision being estimated at 350 a year. Under the arrangement sanctioned by the Court she got 275 per annum, determinable only on remarriage not by non-residence in the house. The arrangement, therefore, in my opinion, clearly involved an alteration of the quality of the beneficial interest of the widow. So far as the residuary legatees were concerned, the primary effect was to alter the quantum of what they would receive, but I am unable to see that it can properly be said that the only purpose and effect of the transaction was a purchase of the widow's interest. The summons asked a question as to compromise (see p. 380). Buckley. J. (at p. 385) himself described the proposal as a fair compromise for all parties. He was not using the term compromise in the strict sense for the legal rights had already been decided. He was, I think, sanctioning a re-arrangement of rights as between tenant for life and remaindermen which could not be carried out without the sanction of the Court because infants were interested. The question of jurisdiction was argued but Buckley. J. seems to have felt no doubt as to his jurisdiction. In cases of this kind the Court is always under the disadvantage that as most of such cases are heard in Chambers there are few reported precedents. There may well have been earlier unreported cases in which the Chancery Courts had exercised their jurisdiction over trustees in a similar way. Be that as it may the decision in Re Trenchard (supra) has stood unquestioned for 50 years and I see no reason why your Lordships should now overrule it.

I turn, therefore, to the third argument. My Lords, a distinguished member of this House once said, in another connection, that while he might have difficulty in drawing a line, he had never had any difficulty in deciding on which side of it a particular case fell. I think that a comparison of the facts in Re Downshire and Re Blackwell on the one hand, and the facts in Re Chapman which is now before your Lordships, illustrate where the line might be drawn.

In Re Downshire and Re Blackwell as in Re Trenchard and. I think, also in Re Duke of Leeds ([1947]) 1 Ch. 525, and Re Lucas (which immediately follows that case) the Court was dealing with compromises in the broad sense between tenants for life on the one hand and remaindermen on the other hand ; they were not varying the rights inter se of parties whom the testator had placed on an equality. In Re Chapman, on the other hand, there was no question of compromise between tenants for life and remaindermen; the Court was being asked to vary the rights inter se of a class which the Testator had directed should be treated in a particular way. As the majority of the Court of Appeal said in the present case, what is proposed is not a composition of rights in any real sense at all. It is nothing more than a re-arrangement of beneficial interests which, to the extent that it might prove to be of advantage to some members of the class, would correspondingly operate to the

prejudice of others.

My Lords, I have, I hope, said enough to show why I think that the Court of Appeal were right in allowing the appeals in Re Downshire and Re Black-well and in dismissing the appeal in Re Chapman, and why, though for different reasons, I agree that the appeal to your Lordships' House should be dismissed.

I cannot sit down without expressing my doubt whether there is any foundation for the suggestion made by Denning, L.J. that the effect of your Lord-ships' decision may be that schemes sanctioned in the past could be ignored by the Revenue and by all persons not sui juris. The High Court is a superior Court and the control of trustees is a matter within its jurisdiction. It would take a good deal of argument to satisfy me that its orders were a nullity and that trustees were not fully protected by orders made by that Court in the exercise of that trust jurisdiction even though your Lordships may, in a later case, have said that the jurisdiction had been wrongly exercised.