

Charles Cunningham Langworthy

GM 8 August 1798. Charles C. Langworthy esq to Miss Austen daughter of the late Archdeacon of Cork.

Monthly Magazine 1798 Gloucestershire At Clifton Church, Charles C. Langworthy esq to Miss Austen dau of the late archdeacon of Cork.

Census 1841 Walcot Somerset. Charles Langworthy 60 yrs. Maria Langworthy 60 yrs.

Bath Directories.

1824 Dr Langworthy physician to Kingsdown House, 24 Circus.

1837 Charles Cunningham Langworthy MD, 24 Circus and Kingsdown House, Box Wiltshire.

Gentleman's Magazine Obituary 28 June 1847. At Bath, Dr Charles Cunningham Langworthy one of the oldest practitioners of that City.

Bath Chronicle 1 July 1847. At his house in the Circus after a protracted illness, Dr Charles Cunningham Langworthy highly respected for his estimable qualities and one of the oldest practitioners of this city.

A Biographical Dictionary of the living authors of Great Britain: Langworthy, Charles Cunningham, Surgeon at Bath who endeavoured to acquire a little notice by espousing the cause of an American Charlatan, in a piece entitled: A View of the Ferkinian Electricity, or an Inquiry into the Influence of the Metallic Tractors, founded on a newly discovered principle in Nature, and employed as a remedy in many painful inflammatory diseases, 8vo. 1797.

A View of the Perkinian Electricity by Charles Cunningham Langworthy, Surgeon, of Bath. published 1798. page 1.

The recent death of a dear and affectionate Brother, to attend on whom, during his sickness was my first inducement for continuing at Bristol, together with other circumstances, which have occurred since the following sheets were printed off, have determined me to fix my residence at Bath. Having more than once, in the subsequent pages mentioned my intention of residing at Bristol, this information becomes necessary to the reader. At Bath I shall devote my time and attention to Metallic Practice and on the same terms as I had proposed when at Bristol. Mr Perkins having engaged to furnish me regularly with his Tractors, I shall be enabled to supply any applicants who may be disposed to keep them in their families; they also may be had of Mrs Langworthy, Dowry Square, Bristol Hotwells. The price of them as sold by Mr Perkins in London is Five Guineas per Set. The place of my residence may be known by enquiring at the Pump-Room.

Charles C. Langworthy. Bath September 1798.

GM 1847 Obituary. At Bath, Dr Charles Cunningham Langworthy one of the oldest practitioners of that City.

New Monthly Magazine 1818 At Modbury, deservedly lamented, G. Langworthy, esq. eldest brother of Dr. L. of Bath. He had been partridge shooting, and was arrived within a few yards of his house, when he dropped down and expired.

GM 1819. Lately. At Modbury, suddenly, in returning from shooting, George Langworthy, esq. brother to Dr. Langworthy, of Bath.

Robert Austen Langworthy

FS. m 3 April 1824 Elizabeth Rigby Collins at Portpatrick Wigtown Scotland

Salisbury Journal 13 June 1825 summary. On Tuesday last a most grand and elegant entertainment was given by Dr and Mrs Langworthy at their country residence Prospect House near Bath to commemorate the arriving of their lovely and interesting daughter in law Mrs Langworthy. To give a full description of the fete would be impossible. Every luxury and comfort that could gratify the eye and tempt the most Epicurean palate were amply provided. The festivities of the day commenced at an early hour. Ringing of bells, discharge of cannon and the enthusiastic sports of the happy and numerous peasantry sufficiently indicated to the chosen guests invited that it was set apart for one continued scene of joy and good humour. At 3 o'clock about 200 children were plentifully regaled with good old English fare, a fine ox and sheep having been roasted for the occasion and a well selected band throughout the day contributed much to enliven the festive scene. At 5 o'clock a sumptuous repast consisting of every delicacy of the season was served up in the saloon to a numerous party of friends. This was followed by a succession of hospitalities during the evening. The house was brilliantly illuminated with devices appropriate to the occasion and the lawn tastefully decorated with a profusion of choice shrubs and flowers in the form of triumphal arches &c interspersed with variegated lamps forming a most beautiful and interesting coup d'oeil. Dancing commenced at eight and an elegant supper was served at one o'clock. After partaking of a refreshing dejeuner a la fourchette the company separated at five o'clock in the morning highly gratified with the entertainment provided by their worthy host and hostess.

Bath Directories.

1824 A. A (sic) Langworthy esq. member of the Royal College of Surgeons London, 24 Circus.

1837. Robert Austin (sic) Langworthy MD. 24 Circus.

Census 1841 St Augustine, Bristol Gloucester.

Robert Langworthy 35 yrs. Elizabeth Langworthy 30 yrs. Maria Langworthy 8 yrs. Elizabeth Langworthy 2 yrs.

provincial medical and surgical association 1840. Langworthy, Austin, MD, Physician to the Kingsdown Lunatic Asylum

Reports from Commissioners. 1844 Langworthy, R A, MD - Longwood House, Ashton, Bristol.

Langworthy, Austin MD. Longwood House, Bristol

Slaters Directory 1846 Bristol. Physicians. Langworthy Austin. 34 Park Street

The Jurist 1849 Saturday, Sept. 2. The following Assignees have been appointed. Further particulars may be learned at the Office, in Portugal-st., Lincoln's-inn-fields, on giving the Number of the Case..

Robert A. Langworthy, Bath, Somersetshire, surgeon, No. 37 617 T.; Daniel Wood new assignee, Thomas Flower deceased.

The Lancet 1850. Dr R. A. Langworthy deceased. Kingsdown, Box near Bath to be disposed of by private treaty, this highly desirable establishment which has been carried on with great success for upwards of a century and now producing a very handsome income and capable of great extension. Immediate possession may be had so that purchase may obtain a renewal of licence at the ensuing sessions in July next. For all particulars apply to Mr Langworthy solicitor Ilminster Somerset, or to Mr Crosby solicitor Bristol.

Letter from the bye-ways of Italy by Clotilda Elizabeth Stisted 1845. Subscribers Names.

Captain **Hanchett**, RN. Mrs. Hammond Mrs. Heyward Mr. and Mrs. Hamilton, (2Copies) Mrs. Hans Hamilton, Mrs. Hozier,

Hanchett v Briscoe 1856. Mr. Langworthy died in 1850, and in 1853 his widow, the Plaintiff, married Mr. Hanchett.

The Plaintiff, though she assented to the advances to her husband, now alleged that she had done so on the understanding that the greater portion of the same would be properly secured on property belonging to her late husband and particularly of his interest in a house at Bath and elsewhere. It appeared that after the death of R A Langworthy, the Plaintiff or her present husband in her right had received the rents of this house until 24 June 1855

Journal of Medical Science 1869. On January 28 at the British Embassy, Paris, Alfred Edmond Baude, Officier Demissionnaire du 1er Regiment de la Garde Impmale, to Maria Frances Talbot Langworthy, daughter of the late Robert Austin Langworthy MD Burn -Newman

Census 2 April 1871 Bevois Hill House, Portswood Road, South Stoneham Hampshire

Christopher Gerard Rigby Collins head 68 late Captain in the Army. Annette Rigby Collins wife 48.

Elizabeth Hanchett visitor widow 66 yrs. born Modbury Devon.

Notes and Queries 1908. Inscriptions at Florence of the Protestant cemetery. Elizabeth Collins Hanchett relict of Captain M. Hanchett RN and daughter of the Rev C. Rigbye (sic) Collins of Bath Somerset and of Sidmouth Devon. died 23 August 1874

google The Protestant Cemetery of Florence: Called the English Cemetery

BB16B §1274/ ELIZABETH (RIGBYE COLLINS) HANCHETT/ ENGLAND/ Cippo. Marmista ignoto. Sec. XIX, post 8/1874. Cippo in marmo bianco sormontato da una croce, poggiante su un basamento in pietra serena, recinto in pietra serena. Possibile intervento di pulitura. [M: Cippo: A: 193.5; L/P: 65.4; P.s.: A: 25; L/P: 72.5; RP.s.: A: 16.5; L: 94.5; P: 190?] Iscrizione in lettere capitali romane e numeri arabi: SACRED/ TO THE MEMORY OF ELIZth COLLINS HANCHETTE/ RELICT OF CAPT. M. HANCHETTE. R.N./ AND DAUGHTER OF THE REV C. RIGBYE COLLINS/ OF BATH SOMERSET/ AND OF SIDMOUTH DEVON/ DIED AUGUST 23RD 1874/-/ I SOUGHT THE LORD AND HE HEARD ME/ AND DELIVERED ME FROM ALL MY FEARS/ PS. VER/ Registro alfabetico delle persone tumulate nel Cimitero di Pinti: Hanchett nata Rigby/ Vedova Elisabetta/ Cristoforo/ Inghilterra/ Firenze/ 23 Agosto/ 1874/ Anni 71 (aged 71) / 1274/ Elizabeth Hanchett, Angleterre, fille de Christophe/ Chiesa Evangelica Riformata Svizzera, 1827-. 2010

google R - FLORIN.MS: THE CITY AND THE BOOK WEBSITE.

MARY BEATA RIGBY COLLINS GB SOMERSET CRISTOFORO church SCO died 14/ 02/ 1884 aged 74

Salisbury and Wiltshire Journal Monday 13 June 1825

On Tuesday last a most grand and elegant entertainment was given by Dr. and Mrs Langworthy, at their country residence, Prospect-House, near Bath, to commemorate the arriving of their lovely and interesting daughter-in-law, Mrs. Austin Langworthy. To give a full description of the fete would be impossible. Every luxury and comfort that could gratify the eye, and tempt the most Epicurean palate, were amply provided. The festivities of the day commenced at an early hour. Ringing of bells, discharge of cannon, and the enthusiastic sports of the happy and numerous peasantry, sufficiently indicated to the chosen guests invited, that it was set apart for one continued scene of joy and good humour. At 3 o'clock upwards of 200 children of both sexes were plentifully regaled with good old English fare, a fine ox and sheep having been roasted for the occasion. A well-selected band, throughout the day, contributed much to enliven the festive scene. At 5 o'clock a sumptuous repast, consisting of every delicacy of the season, was served up in the saloon to a numerous party of friends. This was followed by a succession of hospitalities during the evening. The house was brilliantly illuminated with devices appropriate to the occasion, and the lawn tastefully decorated with a profusion of choice shrubs and flowers, in the form of triumphal arches, &c. interspersed with variegated lamps, forming a most beautiful and interesting coup d'oeil - Dancing commenced at eight, and an elegant supper was served at one o'clock. After partaking of a refreshing dejeuner a la fourchette, the company separated at five o'clock in the morning, highly gratified with the entertainment provided by their worthy host and hostess

Hanchett v Briscoe. Court of Chancery 1856.

Summary. A decree of this Court made on 23 February 1838 in a cause of Phelps v Barnard in which the plaintiff and her then husband Robert Austen Langworthy were defendants, it was declared the plaintiff then Mrs. Langworthy was absolutely entitled to one fifth part of certain South Sea and East India Stock then standing in the names of two of the defendants in that cause as trustees; the dividends thereof to be held and applied for her absolutely and her separate use for life and such one fifth carried to The Account of Defendant Elizabeth Langworthy the dividends thereof from time to time paid for her separate use or until further order.

A Petition was subsequently presented in the cause by Robert Austen Langworthy and the plaintiff his then wife, and Felix Parkinson and William Briscoe which, after reciting an order of 10 August, 1838 for the attendance of the plaintiff before certain commissioners, she had declared the several sums of stock should be transferred into the name of F. Parkinson and W. Briscoe upon trust for her said Elizabeth Langworthy absolutely and the dividends held and applied for her separate use for life and after stating the certificate of the commissioners to that effect prayed for the transfer accordingly. By an order made 24 December, 1841 it was ordered this transfer should be made upon trust for said Elizabeth Langworthy and said sums of stocks were shortly afterwards transferred to Parkinson and Briscoe; the trustees, Felix Parkinson did not actively interfere in the management of the trust but William Briscoe, who was alleged to be the solicitor and confidential professional adviser of the plaintiff's late husband R. A. Langworthy, took upon himself the management of the trust funds.

The trust funds or the greater part of them were sold out by the trustees and advanced to Robert Austen Langworthy upon security of some property. This had been done at the written request of the husband and the plaintiff his wife whereby she expressly authorized the trustees to do so on the husband giving an equitable mortgage of the premises therein mentioned. The plaintiff expressly declared the said Felix Parkinson and William Briscoe shall not be required to make good any loss or losses that may arise to said trust funds so transferred into their names by reason of such present sale and appropriation or of such sales and appropriations having been made by reason of said mortgage proving insufficient to realize the sum of 2,275/- now to be advanced to him and the several sums so advanced to him the said Robert Austen Langworthy. Mr. Langworthy died in 1850 and in 1853 his widow the plaintiff married Mr. Hanchett; of the two trustees Felix Parkinson died in 1849 and William Briscoe in January 1855.

The plaintiff now alleged that she had done so upon the understanding the greater portion of the same would be properly secured on property belonging to her late husband and particularly of his interest in a house at Bath and elsewhere. It appeared after the death of R. A. Langworthy, the plaintiff or her present husband in her right, had received the rents of this house until 24 June 1855. This property had however been claimed by the assignee of Mr. Langworthy who had taken benefit of the Insolvent Act in 1834 and it had been sold to pay prior incumbrances thereon. The plaintiff by this bill insisted that Briscoe had committed a breach of trust by selling out the trust funds and advancing same to her late husband and prayed that they might be replaced out of his estate.

Mr. Rowpell and Mr. Stiffe for the Plaintiff: The object of the declaration of the Court was to protect the wife against the influence of the husband and no assent of hers as a married woman could authorize the trustees to commit a breach of trust. No consideration passed to the wife in the transaction and her exact position was not as it should have been explained to her by the trustee Briscoe nor had she had communicated to her a full knowledge of all the circumstances. The contract was not therefore binding upon her and the securities having turned out insufficient Briscoe as solicitor is personally responsible for the deficiency.

Mr. R. Palmer and Mr. Renshaw contra: It is an entirely erroneous view to divide the plaintiff's interest into a life interest and a reversion. This is a complete acquiescence and when she survived her husband she could then deal with the property as she chose and this is her second husband's suit. The plaintiff was discovert from May 1850 to May 1853 and made no complaint of the advances made with her own assent to her late husband and she also received the rent of one of the houses upon which the money was advanced and continued to receive it after her second marriage down to June 1855.

The Master of the Rolls: In this case I am of opinion that this married woman has disposed of everything she could dispose of namely her life interest but with respect to her reversionary interest subject to her life interest, I am of opinion she had no power to do so. The first question is had she the power to dispose of it. The second question is whether the trustees under the circumstances of the case and under the orders of the Court were not justified in adopting the course they have taken. With respect to the trustees whether they were justified in acting as they did having regard to the orders of the Court, the trustees in my opinion parted with a fund which they were bound to retain and they must therefore replace it. I am disposed to think, although it is not necessary to express an opinion, that although the married woman had no power to dispose of the fund, she might have asked the Court to put it in strict settlement if she had thought fit. To use the expression of the Vice Chancellor of England in the well-known case of Bishop v. Colebrook, if she had come to the Court to ask the Court to settle the fund, she might have had it settled, although she could not dispose of it. I am therefore of opinion the trustees must replace the fund. I think however that must be done without costs as part of the suit has failed and part of it has succeeded. The better plan therefore is to say it shall be done without costs on either side. The amount of stock must be replaced by the representatives of the trustees and paid into Court and the dividends be paid to them until further order.

Hanchett v Briscoe 1857. Reports of Cases in Chancery.

July 22 A.B. a married woman, who was absolutely entitled to stock in Court, being separately examined, desired it to be transferred into the names of trustees, "upon trust for her absolutely and that the dividends should be held and applied for her separate use for her life." This was accordingly done. Held, that, during coverture, she could dispose of her life interest, held for her separate use but not of her reversionary interest, and the trustee having at her request, advanced the fund to her husband, whereby it was lost, was held liable to replace it, but her life interest was made answerable for the trustee's indemnity.

Hanchett v Briscoe. A decree of this Court, made on the 23rd of February 1838, in a cause of Phelps v. Barnard in which the Plaintiff and her then husband **Robert Austen Langworthy** were Defendants, it was declared, that the Plaintiff (then Mrs. Langworthy) was absolutely entitled to one fifth part of certain South Sea and East India Stock, then standing in the names of two of the Defendants in that cause as trustees; but that the dividends thereof were to be held and applied for her absolutely and that separate use for her life. And it was also ordered, that the dividends should be held such one-fifth should be carried to an account, "The Account of Defendant **Elizabeth Langworthy**" and the dividends thereof from time to time paid to her for her separate use or until further order.

A Petition was subsequently presented in the cause by **Robert Austen Langworthy** and the Plaintiff (his then wife) and Felix Parkinson and William Briscoe, which, after reciting an order of the 10th August, 1838, for the attendance of the Plaintiff before certain commissioners, who were to examine her to whom, and in what manner, and for what purpose, she was willing and desirous that the sums of 1,616/. 3s. 2d. Bank £3 per Cent. Annuities, 2,087/. 9s. 10d. Bank Stock, 200/. East India Stock, and 195/. South Sea Stock, standing to the "Account of the said **Elizabeth Langworthy**" should be transferred and disposed of, and that on her examination, she had declared her will to be, that the said several sums of stock should be transferred into the name of F. Parkinson and W. Briscoe, upon trust for her the said **Elizabeth Langworthy** absolutely; and that the dividends should be held and applied for her separate use for her life, and, after stating the certificate of the commissioners to that effect, prayed for the transfer accordingly.

By an order made on the Petition on the 24th December, 1841, it was ordered, that this transfer should be made upon trust for the said **Elizabeth Langworthy**, pursuant to the examination in the Petition mentioned. These sums of stocks were shortly afterwards transferred to F. Parkinson and William Briscoe, the trustees. F. Parkinson did not actively interfere in the management of the trust, but W. Briscoe (who was alleged to be the solicitor and confidential professional adviser of the Plaintiff's late husband, R. A. Langworthy) took upon himself the management of the trust funds.

The trust funds, or the greater part of them, were sold out by the trustees and advanced to **Robert Austen Langworthy** upon the security of some property. This had been done at the written request of the husband and of the Plaintiff, his wife, whereby she expressly authorized the trustees to do so, on the husband giving an equitable mortgage of the premises therein mentioned; and the Plaintiff declared as follows:—"And I, the said **Elizabeth Langworthy**, do hereby expressly declare, that the said Felix Parkinson and William Briscoe shall not be required to make good any loss or losses that may arise to the said trust funds, so transferred into their names as aforesaid, by reason of such present sale and appropriation, or of such sales and appropriations, as aforesaid, having been made, by reason of the said mortgage proving insufficient to realize the said sum of 2,275/. now to be advanced to him, and the several sums so advanced to him the said **Robert Austen Langworthy** as aforesaid."

Mr. Langworthy died in 1850, and in 1853 his widow, the Plaintiff, married Mr. **Hanchett**. Of the two trustees, Parkinson died in 1849 and Briscoe in January, 1855.

The Plaintiff, though she assented to the advances to her husband, now alleged that she had done so upon the understanding that the greater portion of the same would be properly secured on property belonging to her late husband, and particularly of his interest in a house at Bath and elsewhere. It appeared, that, after the death of R. A. **Langworthy**, the Plaintiff, or her present husband in her right, had received the rents of this house until the 24th June, 1855. This property had, however, been claimed by the assignee of Mr. Langworthy, who had taken the benefit of the Insolvent Act in 1834, and it had been sold to pay prior incumbrances thereon.

The Plaintiff, by this bill, insisted, that Briscoe had committed a breach of trust by selling out the trust funds and advancing the same to her late husband, and prayed that they might be replaced out of his estate.

Mr. Rowpell and Mr. Stiffe, for the Plaintiff. The property was vested in the trustees, in trust for Mrs. **Langworthy**, for her separate use for life, with an absolute unqualified interest to her in reversion. She had, therefore, no power, either by an examination in Court (a) or by any act or disposition out of Court, to deprive herself of her reversionary interest in the property, which was a mere chose in action. The two interests are distinct, and will not be considered as united for the purpose of depriving her of the protection intended for her; *Whittle v. Henning* (b). In *Crosby v. Church* (c), there was a bequest of consols, a feme covert, to be transferred to her in her own name, and the interest to be for her separate use, and the principal to remain in the trust of the executors till the youngest of her children should attain twenty-one, when the principal was to be her own; or in case of her demise it was to devolve to her husband. The trustees, on the death of the testatrix, transferred the fund to A.B.; she and her husband afterwards sold it out, and they both signed the transfer: it was held, that a breach of trust had been committed. Here the trustees were guilty of a breach of trust in paying over the trust fund to the first husband, even with the Plaintiff's consent, for being under coverture, she had no power of disposition over her reversionary interest. The wife's acquiescence did not exonerate the trustees from the breach of trust or the consequences of it, and they and not her estate are liable to make good the loss;

The object of the declaration of the Court was to protect the wife against the influence of the husband, and no assent of hers, as a married woman, could authorize the trustees to commit a breach of trust. No consideration passed to the wife in the transaction, and her exact position was not, as it should have been, explained to her by the trustee Briscoe, who was also her solicitor; nor had she communicated to her a full knowledge of all the circumstances. The contract was not therefore binding upon her; and the securities having turned out insufficient, Briscoe, as solicitor, is personally responsible for the deficiency.

The Master of the Rolls held, that the Plaintiff had parted with her life interest, which, assuming that the corpus of the fund would have to be replaced, must go to recoup the trustees in respect of their losses. He required Counsel for the Defendants to address themselves only to the point as to the right of the Plaintiff, during coverture, to deal with the reversionary interest in the fund.

Mr. R. Palmer and Mr. Renshaw, contra. It is an entirely erroneous view to divide the Plaintiff's interest into a life interest and a reversion. The fund was transferred to the trustees "upon trust for **Elizabeth** Langworthy absolutely" with a superadded separate use clause attached to her life interest only, which merely gave her a power of disposition over the rents, independent of her husband, during the coverture. It is clear, that under the orders of the Court, she had an absolute dominion over the fund, either for her separate use or without that clause, and a disposition made by both husband and wife became perfectly effectual. The case is not like *Richards v. Chambers* (a), where the object of the settlement was to exclude the marital right, and to protect the wife against the marital influence; here her express intention was that she was to have the property "absolutely," and for that purpose, the money was paid out of Court and placed in the hands of the trustees. Nor does the case come within the principle of *Whittle v. Homing*, where the avowed object was, by getting in and merging another interest, to defeat the protection afforded the wife. Here the whole absolute interest was from the beginning in the wife, and there was no intention to divide it into portions and keep them severed. The wife concurred in every act complained of, and her interest is bound by that concurrence; *Pawlet v. Delaval* (b); *Brewer v. Swirles* (c).

The Plaintiff was discovert from May, 1850, to May, 1853, and made no complaint of the advances made, with her own assent, to her late husband; and not only so, but she also received the rent of one of the houses upon which the money was advanced, and continued to receive it, after her second marriage, down to June, 1855. This is a complete acquiescence, and when she survived her husband, she could then deal with the property as she chose; and this is her second husband's suit. The orders were made by this Court, which declared her right, and the trustee was bound to act under them. In *Lynn v. Ashton* a feme covert, having an interest for life to her separate use, and a power of appointment of the fund by deed, to take effect after her death, assigned her life interest, and appointed the fund after her death, to trustees, upon trust to invest the fund in the immediate purchase of an annuity for her life. The Court ordered a transfer of the fund to the new trustees accordingly. Prior to the case of *Whittle v. Henning* in 1848, the Courts decided exactly the reverse, as in *Hall v. Hugonin* (a); *Bishopp v. Colebrook* (J). It would be harsh in the extreme to make trustees liable for an error in law, whilst acting in conformity with the existing decisions of the Judges. *Sturgis v. Corp* (c) was also referred to.

The Master of the Rolls. In this case I am of opinion, that this married woman has disposed of everything she could dispose of, namely, her life interest, but with respect to her reversionary interest, subject to her life interest, I am of opinion she had no power to do so.

The first question is, had she the power to dispose of it. The second question is, whether the trustees, under the circumstances of the case, and under the orders of the Court, were not justified in adopting the course they have taken. The first is the more important question, and that question resolves itself into this, whether, where a fund is transferred into the names of two trustees, in trust for the separate use of a married woman for life, and subject to that, to her absolutely, she has power to dispose of the whole of the fund. I am of opinion, that she has not. No doubt "separate use" is entirely a creature of equity, but you must regard the mode in which these estates are created, and the different qualities that belong to them, although in many cases a person may have the power of disposing of the whole fund. That is true both in respect of personal property, as well as in respect of real estate.

In one case relating to powers, Sir Wm. Grant pointed out a very important distinction that exists between an estate given to trustees in trust for A., and his heirs for ever, in which he takes a mere fee simple estate; and an estate given to A., for life, and subject thereto to such uses as he by deed or will may appoint, and in default of appointment, to him and his heirs for ever. In either case it is quite clear, that he has the absolute power of disposing of the whole of the estate, but they are different estates, and different qualities attach to them. What is it that this lady had? Here is a fund given to trustees in trust for her separate use. With respect to that she is a feme sole; she has the power of disposing of it. Subject to that, it was given to her absolutely. She had then the simple reversion in the estate. There is no question but that, if that reversion had been given to her for her separate use, she could have disposed of that reversion. *Sturgis v. Corp*, and several other cases, determine that she could then dispose of the life estate and the reversion, because she is made a feme sole in respect of both, and has, as such, the power of disposing of both; and although they do not coalesce, to use the expression and observation of the Vice-Chancellor of England in the case referred to, she had the absolute power of disposal over the whole of the fund.

Expand the estate, and see what the powers of it were. It is a gift to trustees for her separate use for life, that is, to such uses as she shall by any direction whatsoever appoint during coverture, and subject to that it is given to her, to such directions, and to such persons, and for such interests as she shall by deed or will, or any instrument in writing, direct or appoint when she is discovert, and subject thereto to her representatives. That is the nature of the estate: she has the power of disposition over the one during coverture, and she has no *Briscoe*, power of disposition over the other until she is discovert, when she acquires the power of disposing over the other. By what possibility can the fact of these two estates, or rather these two interests, being united in the same person, give her an interest over the reversion which, taken by itself, she does not possess. No case was cited to me to remove this difficulty. Cases are cited which, in my opinion, go much further, as *Whittle v. Henning*, before Lord Cottenham, where the interests were of the same quality, but the one had been transferred to the other for the purpose of making them coalesce, Lord Cottenham said, he would not allow her to dispose of the property. But here they are of different qualities; the estate for life is for the separate use, but the reversion is not for the separate use: it is to her absolutely, that is to say, it is only liable to be disposed of by some instrument when she is discovert.

The case of *Lynn v. Ashton* (a), and other cases cited, agree with the case in *Smale and Giffard*. These were cases of powers of appointment, which could be executed during the coverture; and the only question was, whether the lady had executed the power during coverture. They are distinct from this case, where she had no power of appointment over the fund during that time. No doubt if she had done the act during her discoverture, she would have been bound. It was suggested that during the three years that elapsed from the death of the first husband to the marriage with the second, she must be considered to have acquiesced, and *Pawlet v. Delaval* and some other cases (a) 1 Ruts. 4- Myl. 188. were cited for that purpose. These are important cases, which the Courts are in the habit of following; but it was very fairly admitted in the argument, that in the case of *Pawlet v. Delaval* there were acts, positive and open, of acquiescence. She had dealt with the amount, and treated it in a particular way, as if she had adopted that view of the case; but in the present case she has done nothing. In my opinion that does not bind her, there being no act of acquiescence during those three years.

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The next question is with respect to the trustees, whether they were justified in acting as they did, having regard to the orders of the Court. It was very justly urged that this was a hard case; but, unfortunately, all cases in which the Court compels trustees to return trust money, where the trustees have not had the benefit of it, are cases of more or less degree of hardship. Here the trustees, in my opinion, parted with a fund which they were bound to retain, and they must, therefore, replace it. I am disposed to think, although it is not necessary to express an opinion, that although the married woman had no power to dispose of the fund, she might have asked the Court to put it in strict settlement, if she had thought fit. To use the expression of the Vice-Chancellor of England in the well-known case of *Bishop v. Colebrook* (a), if she had come to the Court to ask the Court to settle the fund, she might have had it settled, although she could not dispose of it. But I cannot deal with that case as an authority upon which I can now act. If the trustees thought there was any question or doubt about it, they ought to have come for the authority of the Court. And even in cases where this Court will allow married women to part with a fund, it does not allow them to do so out of Court, and without the protection which the Court affords to acts of this character.

I am, therefore, of opinion that the trustees must replace the fund. I think, however, that must be done without costs, as part of the suit has failed and part of it has succeeded. The better plan, therefore, is to say it shall be done without costs on either side. The amount of stock must be replaced by the representatives of the trustees and paid into Court, and the dividends must be paid to them until further order.