in it. Again, the principle adopted by the Chief-Justice would, where there were several dependants, only one of whom was resident within the province, exclude those resident elsewhere from any share in the compensation, since none of them could become a burden on the public or private charity of the province — a result one would think greatly opposed to the intention and purpose of the Legislature.

The only authority upon which the learned Chief-Justice relied is the passage from Maxwell on the Interpretation of Statutes (5th ed. p. 213), cited by the Master of the Rolls in his judgment in *Tomalin* v. *Pearson* (1909, 2 K.B. 61), and the case of *Jefferys* v. *Boosey* (1854, 4 H.L.C. 815). This latter was a case on the law of copyright and dealt with the exclusive right claimed by the assignee of the composer Bellini to print for sale in England copies of this composer's opera of "La Somnambula." The case has not in their Lordships' view any application to the present case.

The passage cited from Maxwell on Statutes runs thus—"In the absence of an intention clearly expressed or to be inferred from its language or from the object or subject-matter or history of the enactment the presumption is that Parliament does not design its statutes to operate beyond the territorial limits of the United Kingdom."

The principle embodied in the passage was directly applicable to the case in which it was cited, because there it was sought to apply a statute of the United Kingdom to an accident happening in Malta, arising out of an employment carried on in Malta. So to apply the statute would indeed amount to making it operate beyond the territorial limits of the United Kingdom, and the Court of Appeal held—quite rightly in their Lordships' view—that this statute did not apply to such an employment, but no attempt is made in the present case to do anything of that kind. Here it is not insisted that the provincial statute shall operate extra-territorially. It is insisted that by its express words it imposes on the employer a liability to compensate his workmen for personal injuries by accident arising out of and in the course of the employment which he carries on and in which they work. Where that employment is carried on in the province of British Columbia, one of the results of this intra-territorial operation of the statute may, the respondents admit, possibly be that in some cases a non-resident alien may derive a benefit under it, but their Lordships think that if the liability thus expressly imposed is to be cut down at all, or if the employer is to be relieved from it to any extent, this must be done either by some provision of the statute itself or of the schedules attached to it, either expressed or to be clearly implied, and not by conjectures as to the policy of the Act not suggested by its language.

It is admitted that this case does not come within the expressed exceptions contained in the statute. If so, the employer is by the terms of the statute made liable to pay the compensation in accordance with the first schedule. When one turns to that schedule one finds that in cases where death results from the injury, and the workman leaves behind him dependants wholly or partly dependent upon his earnings, the amount of the compensation, not exceeding in any case 1500 dollars, is to be paid. In one case, and only one case, is this limit of the compensation cut down and altered—namely, where he leaves no dependants. Then the reasonable expenses of his medical attendance and burial, not exceeding 100 dollars, are alone to be paid.

In *Baird & Company* v. *Birsztan* (1906, 8 F. 438, 43 S.L.R. 300) it was assumed that the widow of an alien workman, who was herself an alien resident abroad, was entitled to recover, and, as Irving, J., pointed out in his dissenting judgment in the Court of Appeal, it was decided in the case of *United Collieries Company* v. *Hendry* (1909 S.C. (H.L.) 19, 1909 A.C. 383, 46 S.L.R. 780) that where the workman's death resulted from the accident and he left as his sole dependant a mother who died before she made any claim, her executrix was entitled to recover the compensation to which she became entitled on her son's death. On the principle adopted by the Court of Appeal in the present case this decision should have been otherwise, as the dependant being dead she never could become a burden on the public or private charity of this country. On the whole case, then, their Lordships are of opinion that the judgment of the Court of Appeal was erroneous and should be reversed, and that, the answer given by Clement, J., was correct in law, and they will humbly advise His Majesty accordingly. The respondents must pay the costs of the appeal.

Judgment appealed from reversed.

Counsel for the Appellant—Martin, K.C., and Eckstein (both of the Colonial Bar). Agents—Blake & Rodden, Solicitors.

Counsel for the Respondents—Sir R. Finlay K.C.—Rowlatt and Herchmer (of the Colonial Bar). Agents—Armitage Chapple & Macnaghten, Solicitors.

HOUSE OF LORDS.

Friday, June 21, 1912.

(Before the Lord Chancellor (Viscount Haldane), the Earl of Halsbury, Lords Ashbourne, Macnaghten, and Atkinson.)

WALFORD AND ANOTHER *v.* WALFORD.

(On Appeal from the Court of Appeal in England.)

Succession—Legacy—Demonstrative Legacy —Interest.

Where a testator had directed payment of a legacy out of the reversion of a fund which did not become available for several years after the testator's death, *held* that the legacy carried

interest from the end of a year after the testator's death in the absence of any clear direction in the will to postpone payment of the legacy.

Lord v. *Lord* (1867, L.R., 2 Ch. 782) *examined* and *approved.*

Appeal from a judgment of the Court of Appeal (COZENS-HARDY, M.R., FLETCHER MOULTON and FARWELL, L.JJ), reported 1912, 1 Ch. 219, *reversing* a judgment of Joyce, J., in favour of the appellants, the residuary legatees of Colonel Walford.

The *facts* of the case are detailed in their Lordships' judgment, which was delivered as follows:—

LORD CHANCELLOR (HALDANE)—I cannot say that I entertain much doubt about this case. The appellants are the persons who, in the events which have happened, are entitled to the residuary estate of a certain Colonel Walford. The respondent is a legatee under Colonel Walford's will. The question in controversy is whether the legacy which was given to the legatee carries interest as from a year after the death of the testator, or whether the right to interest upon it is postponed until the falling in of a reversionary fund out of which payment of the legacy was directed.

The facts of the case are shortly these—Mrs Walford the mother of the testator died in 1900. At her death she had a testamentary power of appointment, exercisable in favour of her children by her husband Mr Walford under a marriage settlement. That settlement comprised certain property of the value of some £22,000, in which she had a first life interest under the settlement, and her husband had a subsequent life interest. By her will, which was made in 1891, she referred to the settlement, and then, in the exercise of her power of appointment, gave and appointed her estate under the settlement to her son Colonel Walford, the testator, absolutely, on the decease of her husband. Colonel Walford thus took a reversionary interest in the corpus of the £22,000. She then gave and bequeathed all her residue belonging to her for her separate use to her husband for life, with remainder as he should by deed or will appoint, and subject thereunto between her children Colonel Walford and his sister, the legatee, the respondent in this case.

Colonel Walford survived his mother and died in 1903. He was survived by his father, the tenant for life of the settled fund. The father did not die till 1910. Colonel Walford by his will, which was made abroad, gave to his sister the respondent "the sum of £10,000 sterling as her sole and absolute property, to be paid"—and these are the words on which the question of construction is raised—"out of the estate and effects inherited by me from my mother in terms of her last will and testament dated the 20th February 1901. . . . And as regards the residue of the estate and effects of my said mother so to be inherited by me in terms of her aforesaid will, and of all my estate and effects at present in my possession," these he gave to whosoever should be the heir or heirs succeeding to the estate of his father under his father's will; and he appointed his father executor.

The question is shortly this—£10,000 under Colonel Walford's will are bequeathed to his sister the respondent, to be paid out of the estate and effects inherited by him from his mother. Then he gives the residue of what is so inherited from his mother under her will, and all his own residue to, in the events which have happened, the persons who are the appellants in this case. The question is whether there is in this will such a direction as debars the respondent from claiming interest, now that the fund has fallen in on the death of the father, as payable to her as from a year after the death of the testator.

The principles which govern cases of this kind are fairly well settled. Legacies are of three kinds—there is the specific legacy, which is a specific *res* secured under the testator's will on his death; and of course it does not abate if the rest of the assets are insufficient for the payment of the general legacies; but it has this disadvantage, that if the particular *res* which is the subject of the specific legacy disappears in the meantime, then the legatee gets nothing. The class of legacy at the other extreme is a general legacy which comes out of the residue, and abates if the residue is insufficient, but, *prima facie*, under a rule of administration of the Court, carries interest as from a year after the testator's death. There is an intermediate class of legacy—namely, a demonstrative legacy, which is simply a general legacy, with the quality attached to it that it is directed to be paid out of a specific fund, and if there is a shortage of assets, and that fund remains, is paid out of that fund without abating. On the other hand, if the fund does disappear, then it has this advantage over a specific legacy, that it is still payable, in virtue of its quality as a general legacy, out of the testator's residue along with other general legacies. The consequence is that if the trust fund disappeared in this case Miss Walford's legacy would have become payable out of such residue as her brother left behind him along with other legacies which he might have given. Now it seems to me that in order to make out that the legacy of £10,000 to Miss Walford, which her brother's will directed to be paid out of the reversionary fund, is to be postponed, so far as the title to interest is concerned, until the reversionary fund falls in, you have to make out that there is, expressly or by implication, a direction that the legacy is not to be payable, that there is to be no right to payment, until a certain time, and therefore that the right to interest is postponed.

The principle of law is laid down by Lord Cairns in a passage in his judgment in *Lord* v. *Lord* (L.R. 2 Ch. 782) which is quoted by Cozens-Hardy, M.R., in his judgment in this case. Lord Cairns says—"The rule of law is clear and there can

be no controversy with regard to it, that a legacy payable at a future day carries interest only from the time fixed for its payment. On the other hand, where no time for payment is fixed, the legacy is payable at and therefore bears interest from the end of a year after the testator's death, even though it be made payable out of a particular fund which is not got in until after a longer interval." The question therefore is, whether, upon the words in controversy in this case, the legacy is not directed to be paid until a future date. The burden appears to me to be upon those who assert that it is so to make it out, because otherwise the general rule applies, as pointed out in *Lord* v. *Lord*, that the right to the payment of the money arises at once, although it is directed to be paid out of a particular fund which will not fall in until afterwards.

It may be that in this case, if the testator had had his attention called to the point, he would have expressed himself differently, and would have said, "I do not intend my sister to have the reversionary legacy, or to claim interest upon it, until the falling in of the reversionary fund." That may be so, but in my opinion courts of justice are precluded from entering into such speculations. They are confined, and rightly confined, to applying common sense to the words which the testator used in his will read as a whole. If within that you can spell out an intention such as I have referred to, well and good. If not, you must not supply it by any conjectures as to what the testator would probably have said if his attention had been called to the point on which it was desirable that he should say something.

Then there is another general observation which I wish to make. In cases of this kind—cases of wills of personal estate—it is in nearly all cases useless to try to compare the will under consideration with some other will upon which there has been a decision. The will in each case must be read as a whole, and unless the words are substantially identical very little light can be got from a decision on some other will, except so far as that decision lays down some such general principle of construction of wide application as was laid down in *Lord* v. *Lord*. Therefore I do not pause to make observations on the case of *Earle* v. *Bellingham* (No. 2) (1857, 24 Beav. 448) which was decided one way, nor on the case of *Wood* v. *Penoyre* (13 Ves. 325) which was decided another way, nor on the Irish case of *In re Gyles* (1907, 1 Ir.R. 65), because those cases were decided on wills the wording of which was very different from the wording here. What I do look at is the language which the testator has used; and the question which I put to myself is, Is there to be found here a direction that the legacy is not to be paid till the fund falls in, which displaces what would be the ordinary principle of administration? I am unable to find such a direction; and therefore I come to the conclusion that the view taken by Joyce, J., was wrong, and the view taken by the Court of Appeal was right. I agree with the judgments delivered by Cozens-Hardy, M.R., and Farwell, L.J., and I move your Lordships that this appeal be dismissed with costs.

The EARL OF HALSBURY and LORD ASHBOURNE concurred.

LORD MACNAGHTEN—I agree with the learned counsel for the appellants that the question in this case is not to be solved by simply styling this bequest a demonstrative legacy. I think, having regard to the circumstances of the case, the relationship of the parties, and the language of the mother's will, which is pointedly referred to in the testator's will, and also to the testator's own language, that it is more probable than not that the testator intended that his sister should have no claim for payment until the death of the father. At the same time I must say that if that was his intention he has not made it sufficiently plain to authorise your Lordships to give effect to it in this appeal.

LORD ATKINSON—I concur. I think that there is not to be found in the will any sufficiently clear expression of an intention that the payment of the legacy should be postponed until the reversionary fund had come into possession.

Judgment appealed from affirmed, and appeal dismissed with costs.

Counsel for the Appellants—Buckmaster, K.C.—J. G. Harman. Agents for Appellants—Trotter & Patteson, Solicitors.

Counsel for the Respondent—G. Cave, K.C.—W. M. Cann. Agents for Respondent—Johnson, Weatherall, & Sturt, for George Hadfield, Bennett, & Carlisle, Manchester, Solicitors.

PRIVY COUNCIL.

Wednesday, July 3, 1912.

(*Present*—Lords Macnaghten, Atkinson, Shaw, and Mersey.)

WHITE *v.* WILLIAMS.

(ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.)

Ship—Contract—Charter-Party—Construction—Custom of Trade.

The appellant chartered a ship to carry coal to Sydney on terms, *inter alia*, "consignees to effect the discharge of the cargo—steamer paying a shilling per ton." He then sold the cargo on c.i.f. terms to the New South Wales Government, stipulating "the Government to guarantee to discharge the vessel. . . . The cost of stevedoring to be paid by the Government."

Held that the respondent, as nominal defendant for the New South Wales Government, was entitled to the benefit of the 1s. per ton contributed by the ship.