

page 828, the following appears: "The same principle applies to cases where the whole of the estate is conveyed or devised, but for particular objects and purposes, or on particular trusts. In all such cases if those objects or purposes or trusts, by accident or otherwise, fail and do not take effect, or if they are all accomplished and do not exhaust the whole property, then a resulting trust will arise for the benefit of the grantor or deviser or his heirs." In *Cooke v. Smith* (45 C.D., page 38) it is laid down: "When a deed assigns the property of the debtor to trustees to pay debts, and does not expressly provide for the payment of the surplus to the debtor," there is a resulting trust of such surplus to the debtor. In fact, any work on equity will give you any number of such cases. The principle is that where there is a surplus beyond the amount required, that surplus reverts to the person who has paid the money.

14. Have you read the papers in reference to this matter?—Yes; I have read Parliamentary Paper B.—19.

15. You will have noticed that, in one opinion given by the Solicitor-General, he reads in certain words which are not in the Act. He reads them in so as to make clear the intention of the Legislature. Is there any authority for that?—Yes; there is authority for it. I should not think it necessary to read in the words, the principle governing trusts is so well known; but in "Broom's Legal Maxims," 6th edition, page 498, you will find this passage: "He who too minutely regards the form of expression takes but a superficial, and, therefore, probably an erroneous, view of the meaning of an instrument." In construing a deed every part of it must be made, if possible, to take effect, and every word must be made to operate in some shape or other. "The construction likewise must be such as will preserve rather than destroy": Lord Brougham, *Langston v. Langston* (2 Cl. and Fin.). "The Judges ought to be curious and subtle to invent reasons and means to make Acts effectual according to the just intent of the parties": Crossley *v. Scudamore*, *Mosely v. Motteux* (10 M. and W., page 533). "They will not therefore cavil about the propriety of the words, when the intent of the party appears, but will rather apply the words to fulfil the intent than destroy the intent by reason of the insufficiency of the words": 1 Plow, 159, 160, 162. "When a Court of law can clearly collect from the language within the four corners of a deed the real intention of the parties, they are bound to give effect to it by supplying anything necessarily to be inferred from the terms used": *Gwyn v. North Canal Company* (L.R., 3 Ex., 215). "It is an established rule when construing a statute that the intention of the lawgiver and the meaning of the law are to be ascertained by viewing the whole and every part of the Act. . . . If it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant; and it is a sound general principle in the exposition of statutes that less regard is to be paid to the words used than to the policy which dictated the Act: as if land be vested in the King and his heirs by Act of Parliament, saving the right of A, and A has at that time a lease of it for three years, in this case A shall hold it for his term of three years, and afterwards it shall go to the King": *Hine v. Reynolds* (2 Scott N.R. 419). "It is by no means an inconvenient mode of construing statutes to presume that the Legislature was aware of the state of the law at the time they passed": *Jones v. Brown* (2 Exch., 332). These are principles that would be considered in construing legislation with regard to trusts.

16. Then, the clause in the Bank of New Zealand and Banking Act, which says that the £500,000 may be paid over to you, being silent in respect to the disposition of the interest upon the debentures, you consider that it would have been superfluous to have inserted a provision in that regard, as the ordinary rule of law would apply?—If I saw an apparent omission I would understand that the Legislature saw there was no necessity for the words. In some cases the Legislature has put in such a provision, as for instance in "The Foreign Insurance Companies Act, 1894." That Act allows the foreign companies to deposit securities or cash with the Public Trustee. He holds them in trust to meet possible claims, and the Act expressly states that any earnings on the cash deposited go back to the depositor; but if the Act had not said so I should certainly, on the general principle of law, pay the earnings to the depositors.

17. All that you have to keep by law is the £500,000?—That is all. I should certainly pay the interest back to the Treasury. It would only be entered in the books of the Public Trust Office for the purpose of record so as to keep the books clear.

18. Have you received any interest since then?—Yes.

19. What interest?—Interest on the sum for the half year. This is the letter which I wrote to the Secretary of the Treasury:—

"Wellington, 16th May, 1901.

"SIR,—

£500,000 Investment.

"I should be glad of a reply to the first paragraph of my letter of the 26th ultimo at your earliest convenience.

"As the investment is in my name, it is necessary that I should have some record of the interest having been paid. The interest earned by the money belongs to the Government by a resulting trust, and perhaps you consider it unnecessary to pay it into this office, as it would be no doubt immediately taken out again.

"It would, however, in my opinion, be passed through our accounts in order to complete our records. I refer you to my letter of the 23rd October last, reminding you of a verbal arrangement between us that this should be done.

"You stated in your letter of the 14th March last that interest was payable on the 15th February and August in each year.

"I am, &c.,

"J. W. POYNTON, Public Trustee.

"The Secretary to the Treasury, Wellington."

It was on the 2nd July it was paid into the Treasury.

20. If there is any further interest accumulating, what will you do with it?—Pay it into the Treasury, unless the Treasury wishes me to take charge of the accumulations.