be settled for the legatee's "sole [175] benefit," therefore any construction by means of which a beneficial interest may be taken by any other person must be excluded. No doubt the word "sole" must have its full effect and operation; but I am of opinion that the effect of that word is not such as is contended for by the Defendant. The £10,000 is to be laid out for the "sole benefit" of the Plaintiff, but "*in the same manner*," as nearly as may be, as the other £10,000 secured on the Birmingham property. How was that settled for the benefit of the Plaintiff? She had a life interest with these powers. A life interest is surely improved by the addition of a power to appoint to a husband and children.

I admit that there is no gift to the children, except through the power; but I am of opinion that the Plaintiff, in addition to her life interest, is entitled to a power of appointment over this legacy, in favour of her husband and children or their issue, with an ultimate limitation, in default of appointment, to the representatives of the settlor. I must declare so accordingly.

The costs must be paid out of the testator's estate.

[176] THE ATTORNEY-GENERAL *v.* THE CORPORATION OF LEICESTER.

Feb. 17, 19, 1844.

An agent assisting in a breach of trust is personally responsible.

A municipal corporation were trustees of a charity. They permitted their town clerk to receive and retain the trust monies, instead of seeing it applied to the purposes of the trust. Held, that the corporation and the town clerk were liable for the breach of trust.

In a suit to remedy a breach of trust, it is not, since the New Orders, necessary to make every party participating in the breach of trust party to the suit.

This was an *ex officio* charity information filed by the Attorney-General against the Corporation of Leicester, Mr. Burbidge, their former town clerk, and against the present trustees of one of the charities in question.

It appeared that Sir Thomas White, Robert Heyrick, and John Parker had, many years back, made several benefactions to the Corporation of Leicester, upon certain charitable trusts, by which they were, in effect, to employ the income in making loans to young men, repayable without interest, and, on repayment, the same sums were to be lent out again in a similar manner. The Corporation had, accordingly, for a considerable period, lent out these monies on bond; and it had been the practice for the outgoing mayor to hand over the balance of the funds to his successor, together with the securities; but for some years previous to the passing of the Municipal Corporation Act (1835) the monies had been received by Mr. Burbidge, the town clerk, and retained by him. He, however, paid interest to the mayor for the time being for his own use. No money was then handed over by the outgoing mayor to his successor; but an accountable receipt was given by the former to the latter.

The Corporation neglected to lend out the money according to the trust; and, at the passing of the Municipal Corporation Act, a large balance, alleged to amount to nearly £6000, remained in the hands of Mr. Burbidge, the town clerk. The new Corporation ap-[177]-pointed a new town clerk, and Mr. Burbidge claimed, under the Act, a large compensation for the loss of his office, the amount, which he alleged he could not get settled, exceeded the sum due from him.

It appeared that by deeds executed by Mr. Burbidge, in 1836, reciting that he had a considerable balance of the charity funds in his hands, he, Burbidge, conveyed his rights to the compensation, by way of mortgage for securing the balance due from him to the charity.

Mr. Twiss and Mr. Blunt, in support of the information, argued, that both the Corporation and Burbidge were liable for the breach of trust; the former as direct trustees, neglecting their duty and permitting the trust funds to be misemployed; and the latter having, with knowledge of the trust, received the trust monies and misemployed them for his own benefit.

Mr. Turner and Mr. Rolt, for the Corporation, contended that the Corporation had

not incurred any liability ; that the receipt and misapplication was the individual act of the mayor, and not of the Corporation.

That the information was defective for want of parties, inasmuch as the several mayors of the borough who had participated in the alleged breaches of trust had not been made parties.

Mr. James Parker, for Burbidge, contended that he was a mere agent of the Corporation, and accountable only to his principal, and that he had a right to set off his claim for compensation against the monies for which he was accountable to them.

Mr. Busk, for the trustees of White's charity.

[178] *Wilson* v. *Moore* (1 Myl. & K. 146), *Attorney-General* v. *Wilson* (Cr. & Ph. 28), *Caffrey* v. *Darby* (6 Ves. 488) were cited.

Mr. Twiss, in reply.

THE MASTER OF THE ROLLS [Lord Langdale]. I will not trouble you to reply. I am very much surprised at the points which have been raised here, nothing being more clear than the principle on which this Court proceeds.

The Corporation of Leicester, either by original endowment or by acts of their own, appear to have been the trustees of several charitable funds, which were to be employed in making loans to a particular description of persons, which loans, when recovered from the borrowers, were to be again applied in a similar way. What has happened, in very many instances in this case, is this: the monies have been lent on bond and have been recovered, but, being recovered, they have not been lent out again, but have remained in the hands of Mr. Burbidge, the town clerk, who has employed them for his own benefit, and it is said, he has paid the interest thereon to the mayor for the time being for his own benefit. The argument is, that the consequences of this (than which a grosser breach of trust never happened) are to be entirely escaped from by the Corporation, by saying, "it was not the Corporation, but our mayor, who lent the money to our town clerk, and this was done without our authority and without any neglect on our part." That is the sort of defence which is set up by the Corporation.

[179] Now, in the first place, it cannot be disputed, that if the agent of a trustee, whether a corporate body or not, knowing that a breach of trust is being committed, interferes and assists in that breach of trust, he is personally answerable, although he may be employed as the agent of the person who directs him to commit that breach of trust. (See *Fyler* v. *Fyler*, 3 Beav. 550, and the cases cited.)

It is said there has been no neglect, for that somebody must have been employed in the business. It is true, that in a corporation, there is no single hand to receive a sum of money, therefore someone else must be employed to receive it, and here, it is said, the mayor was employed and was entrusted to do so. That might have been perfectly right, and if in the ordinary course of transactions, the mayor had been employed by the Corporation to receive the money, and, without any default of theirs, had misapplied it, I do not say the circumstances might not have been such as to exonerate the Corporation.

But what was done from year to year? Not superintending the employment of the money as they ought to have done, but, taking such representations as were made to them, the Corporation permitted the mayor, or the agent of the mayor, as it is said (though this was the agent of the Corporation as well as the agent of the mayor), to employ this money, from year to year, as they pleased, without taking, from time to time, those steps, which were always in their power, to ascertain how the money received by the mayor had been employed. Assuming it to have been right to permit the mayor to receive this money, was it enough for the Corporation to see that the mayor produced a receipt, neglecting altogether to super-**[180]**-intend the employment of the money according to the trust, and thus leave the mayor at liberty, for anything they knew, to allow the misemployment of the money, in the way in which it has been done in this case. There was great neglect. The Corporation of Leicester, whose servant it is said the mayor was for this purpose, ought vigilantly to have watched and superintended the employment of that money, which they placed in his hands; if they had so done, they would have known that this breach of trust had been going on. There has been a plain neglect on their part, and they are answerable for the consequences of that neglect.

I am surprised to find that there is any doubt in a case of this kind. There would be an end to all cases of breach of trust, if a trustee is to permit his agent to retain the trust money, from time to time, when his duty is to superintend and examine into the application of the money; and if, because he might have been right in allowing an agent to receive the trust money for him, he is to be considered guilty of no neglect in allowing such agent to retain it. It seems to me clear that the Corporation were answerable for the misemployment of the trust funds; and it is perfectly clear also that Burbidge is answerable, for he, the agent to the trustees, knew and was aware of it all, and he, for his own profit and his own advantage, employs this money in a way contrary to the trust, and at the same time pays to the mayor, contrary to the trust, as it would seem, the interest of this money for his own use. A more gross breach of trust, therefore, I hardly ever heard of than this seems to have been.

An objection has been raised as to parties. It has been argued that the several mayors who were cognizant of these breaches of trust ought to have been made **[181]** parties to this information. There has been a great deal of argument as to the propriety of bringing them before the Court in this information, to prevent their being brought here in other suits which may arise hereafter. The Attorney-General, as I understand this case, was in a situation to charge them all with these breaches of trust, personally and individually, if he thought proper. Is it the law of this Court, or is it not, that every person who participates in a breach of trust must be a party to a suit to remedy that breach of trust? A General Order was made not long ago which rendered it unnecessary to bring all the parties to a breach of trust before the Court.(1) I do not say these mayors did not join in the breach of trust; but supposing them to have joined therein, I conceive that if this General Order is to have any operation at all, it renders it unnecessary to make all persons who have joined in the breach of trust parties to a suit for the redress of that breach of trust. It is true that the consequence might be to render it necessary to file some other information; but the question is, whether the Attorney-General, complaining of the breach of trust, is to be compelled to make them parties to the present information; and I am of opinion that the order relieves him from that obligation.

I think, therefore, that both the Corporation and Mr. Burbidge are liable to repair this breach of trust; and that it was not necessary for the Attorney-General to bring those other parties before the Court; they may be liable, and may be personally called on, in another proceeding.

[182] The next question is, what are these parties answerable for? Having attended to the evidence in this case, it certainly does not appear to me that, at present, a charge has been made out against Mr. Burbidge to any greater extent than £2886, 10s. 10d., and I shall order him to pay that sum into Court. With regard to the rest, I think I may make a declaration that the Corporation is answerable to these charities for that sum and such other sums as may be found due from Burbidge to these charities on the taking of the account to be directed; but I shall not, at this time, considering the form of this information, make any order for the Corporation to pay that or any other sum into Court: that must stand over to a future occasion. An account must be taken of the several sums of money, and parts of this trust property which have been received by Mr. Burbidge in the manner stated in these pleadings; an account of the interest which he has paid on it; with liberty to the Master to state special circumstances; I must reserve further directions and costs.

I say, again, this matter might be much better arranged if payment could be had out of the compensation fund which is coming to Mr. Burbidge. It is certainly with no satisfaction that I make a decree of this sort; but, unless some arrangement can be made between the parties, as to the compensation, I have no other duty than to declare what seem to me to be the rights and obligations of the parties, and the decree must stand in the way I have pronounced it.

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(1) 32d Order of August 1841, Ordines Can. 174. And see *Perry* v. *Knott*, 5 Beavan, 293; *Kellaway* v. *Johnson*, 5 Beavan, 319; *Allan* v. *Houlden*, 6 Beavan, 148.