

when pactional rent is payable at the same time as ordinary rent, a discharge for the one will cover the other. The landlord attempts to explain the matter by a reference to the factor's letters, but on the first part of the case I have no hesitation in agreeing with your Lordships. On the other part I am quite as clear. There has obviously been miscropping, and for the benefit of the tenant, and I think the landlord is entitled to his additional rent for the last year.

LORD MURE—I am of the same opinion. It is quite clear that the tenant deliberately miscropped for the last year, and it is quite as clear that he has been discharged for the rents of 1871 and 1872, and I do not think that the factor's letters at all weaken his case.

Counsel for Pursuers—J. Guthrie Smith and Mackintosh. Agent—W. J. Shiress, S.S.C.

Counsel for Defenders—Solicitor-General (Watson) and Robertson. Agent—Neil M. Campbell, S.S.C.

Monday, November 23.

## SECOND DIVISION.

[Lord Mure, Ordinary.]

SIMPSON AND OTHERS *v.* RAMSAY AND OTHERS.

18 and 19 Vict. c. 63—*Friendly Society—Executive Council—Suspension—Jurisdiction—Title to Sue.*

Where the executive council of the Ancient Order of Foresters suspended an affiliated society for disobedience of a majority of its members to the order of the District Court, and by a new dispensation authorised the loyal minority to hold a Court of Ancient Foresters under the same name and number as the Society suspended.—*Held* that the Trustees of the Society suspended had no *status* to sue for recovery of securities and documents belonging to the Society.

The summons in this suit, at the instance of the Trustees of the Court Royal Archer, No. 1544, Ancient Order of Foresters' Friendly Society, Greenock, against John Ramsay and others, claiming to be trustees of the same Friendly Society, concluded for declarator that the pursuers are the trustees of Court Royal Archer, 1544, Ancient Order of Foresters Friendly Society, Greenock, and are entitled to all the rights of such trustees, and in particular to the custody of certain documents, consisting pass books, bills, &c., specified in the summons.

The question in this case was whether the pursuers had a right to represent the Court Royal Archer, a subordinate court of the Ancient Order of Free Foresters, or, if not, to sue as trustees of a separate association. The main facts of the case, and the dispute out of which the action arose, are sufficiently set forth in the following interlocutor of the Lord Ordinary (MURE)—

“24th April 1874—The Lord Ordinary heard parties' procurators, and considered the closed record, proof adduced, and whole process, finds that

the case, as disclosed in evidence, resolves into and depends upon questions as to which the jurisdiction of this Court is excluded: Therefore dismisses the action, and decerns; Finds the defenders entitled to expenses, of which appoints an account to be given in, and remits the same, when lodged, to the auditor to tax and report.

“*Note*—This action has been raised by the pursuers as ‘Trustees of the Court Royal Archer, No. 1544, Ancient Order of Foresters Friendly Society,’ in order to have it declared that they possess that character, and, as such, are entitled to the custody of the monies, securities, and documents belonging to that Society; and it concludes against the defenders, as erroneously alleging themselves to be trustees of the Society, for delivery of those monies, securities, and documents. It is founded on certain clauses of the Friendly Societies Act 1855 (18 and 19 Vict., cap. 63), by which it is provided that all the estates, real and personal, of any such Society, shall be vested in the trustees for the time being; and by the 19th section of which the trustees are authorised to take proceedings in any court of law or equity concerning the property of the Society for which they are trustees.

“*Ex facie* of the summons, therefore, the action appears to be one which this Court has jurisdiction to entertain, and there is, accordingly, no plea to jurisdiction specially stated in defence. But the defence consists of a denial of the pursuers' statement that they are trustees of the ‘Court Royal Archer, No. 1544, Ancient Order of Foresters’ in question; and in the statement of facts for the defenders they enter into an explanation of certain disputes which arose between the members of the Society, including the pursuers and defenders, in the years 1869 and 1870, at a time when the pursuers were not the trustees of the Society, which resulted in the suspension of the Society as originally constituted, and the granting of a new dispensation by the Executive Council of the Ancient Order of Foresters. The effect of this, the defenders contend, was to abrogate and supersede the Society as originally constituted, and to substitute, by the new disposition, under the name ‘Court Royal Archer, No. 1544,’ the Society of which the defenders are trustees, in its place.

“The defenders' allegations as to the suspension and reconstruction of the Society having been denied by the pursuers, a proof was allowed; and at the discussion which took place upon the proof the question of jurisdiction was distinctly raised by the defenders, and after repeatedly considering the evidence applicable to the nature of the disputes which led to the suspension and reconstitution of the Society, and the present relative position of the pursuers and defenders, the Lord Ordinary has come to the conclusion that the plea to jurisdiction is well founded, because the right and title of the pursuers to maintain the action depends mainly on the legality of the suspension and proceedings following upon it, which are challenged by them. For if the suspension was a valid act on the part of the Executive Council, the pursuers can scarcely, it is thought, maintain that they are trustees of the Society, in as much as the order of the Executive Council by which the Society was suspended, and was for all practical purposes in abeyance, had been issued prior to the month of June 1870, in which the pursuers allege that they were elected trustees. And if the new dispensation, by which those of the original Society who

had been opposed to the proceedings which led to the suspension, were substituted for, and continued as the 'Court Royal Archer, No. 1544, Ancient Order of Foresters,' was a valid exercise of power on the part of the Executive Council, then the monies, securities, and documents in question fall, it is thought, to be retained by them. Now these acts of the Executive Council are challenged by the pursuers on various grounds, the decision of which is necessary for the disposal of the pursuer's case, but the consideration of which appears to the Lord Ordinary to be excluded from the jurisdiction of this Court,—some of them by the rules and laws of the Society, and others in respect of the 41st section of the Act 18 and 19 Vict., cap. 63.

"This suspension and new dispensation appears to have been issued in the following circumstances:—

"1. In the autumn of 1869 a dispute arose between the members of the Society relative to the election of surgeon, which led to an appeal on the part of the minority to the 'Arbitration Committee,' being the first court of appeal constituted by the laws of the Society. That appeal was dismissed by the Arbitration Committee, upon which an appeal was taken to the 'District Arbitration Committee' of the Order, being the next court of appeal, and whose decision is, by rule 88, section 4, of the General Laws of the Order, declared to be binding until reversed or altered upon an appeal to the 'County Arbitration Committee.' Under this appeal to the District Court the parties, now respectively represented by the pursuers and defenders, appear to have been fully heard, after which a decision was pronounced reversing the decision of the 'Arbitration Committee,' finding that the party who had been elected surgeon had no legal right to the office, and appointing the decision to be complied with not later than the 18th of April 1870. This decision was pronounced on the 2d of April, and was not appealed against. But at a meeting of the Society held on the 15th of April, a motion to comply without qualification with the District Arbitration Committee's decision having been put, an amendment, to comply with the decision 'by paying a fine of two pounds,' and reserving the right to appeal to the County Arbitration Court, was put and carried.

"2. This resolution of the Society to comply to a certain extent only, and under reservation of the right to appeal, having been communicated to the officials of the 'District Arbitration Committee,' was not considered by them to be a compliance with their decision; and a notice to that effect having been forwarded to the Executive Council of the Order, they, on the 19th of May, in terms, it is said, of the 44th section of the General Laws of the Order, suspended the Society from all the rights, privileges, and benefits appertaining to the said district and the Ancient Order of Foresters; and intimation of this suspension was duly made to the Society on the 30th of May thereafter. Now the effect of this, as contended for on the part of the defenders, was to deprive the whole members of the Court suspended of the privileges of membership, and of their right and power to act as a Court of the Ancient Order of Foresters until the suspension was recalled; and it is distinctly shown upon the evidence that it was while this suspension was in operation that the pursuers, other than James Dewar, were nominated trustees.

"3. Following upon this suspension, an applica-

tion appears to have been made by some of those members of the Society who had been all along willing to comply unqualifiedly with the decision of the District Court to the Executive Council of the Order for authority to carry on the Society. Upon this a new dispensation was issued on the 31st of July 1870, authorising the defender John Ramsay, and certain other parties, to hold a Court of Ancient Foresters at Greenock, under the title of 'Court Royal Archer, No. 1544,' and which it is alleged they have since accordingly done. And it further appears from the evidence that at the date of the suspension and new dispensation the monies, securities, and documents, of which the pursuers seek to enforce recovery, were in the possession of the late John Love, one of the then trustees of the Society, who, after the issuing of the new dispensation was re-elected a trustee along with the defenders James Inglis and Alexander Miln, and that since Mr Love's death those securities and documents have been in the possession of the defenders.

"4. After the issuing of this new dispensation those of the Society who took the same view of their rights and position as the pursuers, continued to meet separately; and on the 16th of February 1871, at a meeting called for considering the question, a motion was unanimously carried to 'comply with the District Arbitration Committee's decision of 2d April 1870, and request that our suspension be raised according to law.' Upon this a certificate of compliance was immediately forwarded by the 'District officers' to the 'Executive Council,' requesting that the suspension might be raised, and the suspended members of 'Court Royal Archer, No. 1544,' restored to all the rights and privileges of the Order; and on the 21st of February a letter of reinstatement was issued by the Executive Council, and forwarded to the district officers, cancelling the suspension, and providing 'that Court 1544 comprising the minority previously reinstated, and the majority now reinstated, will be henceforth recognised as held under the dispensation granted by the Executive Council on the 20th July 1870.'

"5. Notwithstanding this reinstatement of the pursuers and those who acted with them, and official reunion of the various portions of the original Society, the parties appear to have continued to meet separately, as they were not able to agree as to the precise terms upon which they were to meet together; and they have differed, among other things, as to which of them is entitled to the custody of the monies, books, and documents to which the present action relates.

"Looking at the whole matter, therefore, in a general point of view, the question thus raised as to the books and documents is a dispute between different portions of the Society, for which the rules of the Society do not appear to have prescribed any particular mode of settlement; and falls therefore, it is thought, within the provisions of the 41st section of the 18th and 19th Vict., cap. 63, by which an exclusive jurisdiction is conferred on Sheriffs of counties in such matters; *Davie v. Colinton Friendly Society*, Nov. 10, 1870. And when the grounds upon which the proceedings relate to the suspension and new dispensation are challenged, as maintained in argument by the pursuers before the Lord Ordinary, are examined, they appear to him to raise points as to which the jurisdiction of this Court is also excluded. For the main questions raised were—1. Whether the

deliverance of the District Court of Arbitration of the 2d of April 1870 was a sound deliverance; 2. Whether the District Court was wrong in holding that the resolution of the 15th of April 1870 was not a proper compliance with their decision of the 2d of April; 3. Whether the suspension following upon the certificate of non-compliance was legal, and issued according to the rules of the Society; 4. Whether the new dispensation was properly issued, and within the power of the Executive Committee to grant; and (5) Whether the mode in which the district officers were authorised to reinstate the pursuers was one which the pursuers were bound to comply with. Now these propositions, with the exception perhaps of the first and second of them, appear to the Lord Ordinary to raise questions for the settlement of which no special provision is made by the rules of the Society, and which, therefore, the Sheriff of the county is alone competent to deal with; while for the first of them a mode of final settlement appears to be prescribed by the rules, viz., an appeal to the 'County Arbitration Committee,' because, subject to such appeal, the decision of the District Arbitration Committee is declared to be binding,—Rule 88, sect. 4.

"On these grounds, the Lord Ordinary has come to the conclusion that he has not jurisdiction to dispose of this case, and he has therefore dismissed the action."

The pursuers reclaimed.

Cases cited—*Yeates*, 7 M'Naughton and De Gex, 227, 3 Drury, p. 170; *Callaghan*, L.R.C.P., 4, 288.

At advising—

**LORD JUSTICE-CLERK**—The facts of this case are so clearly stated in the note of the Lord Ordinary that I think it unnecessary to do more than refer to it. The Lord Ordinary has sustained the plea that this Court has no jurisdiction to entertain the action because this is a dispute between the members of a Friendly Society regulated by the rules certified according to law, and that therefore the Sheriff was the only authority competent to review the proceedings. If this were a dispute between members of the association, no doubt this question would necessarily arise, nor do I say that the judgment of the Lord Ordinary would in that view be open to question. But a preliminary question appears to be raised, namely, whether the pursuers are members of the association in question, and whether they have any title to pursue the action which we have now to consider. It will be borne in mind that the present pursuers sue this action as trustees of Court Royal Archer, No. 1544, Ancient Order of Foresters Friendly Society, Greenock, and that in that character they claim the specific documents mentioned in the conclusions of the summons, consisting of vouchers of debt to the extent of £1150 or thereby, and generally to the whole books and papers of this Friendly Society. If they are the trustees of this Friendly Society under the Acts of Parliament and the rules of the Society, they are vested in the property generally belonging to it. The question is, whether, in the circumstances disclosed on the face of these proceedings, and on the statement made in the record, the pursuers possessed that character? The defenders maintain that the pursuers are not the trustees of the Friendly Society in question, and have no title to demand delivery of the property belonging to it.

The first question which arises is, Whether the suspension of Court Royal Archer 1544 was or was not legal? I have found no sufficient ground to create any serious doubt on this matter, and indeed in the ultimate discussion at the bar it was conceded that the suspension by the District Court was legal, and in my observations I shall assume it to have been so. The next question is, What was the effect of this suspension? This is regulated by the 44th section of the general laws of the Ancient Order of Foresters, which bear this, "that any Court, Courts, or District remaining under suspension for a period of eighteen calendar months shall, at the expiration of such time, be expelled the Order." The result, therefore, of the suspension was that the members constituting Court Royal Archer, No. 1544, including the pursuers, have been expelled from the Ancient Order of Foresters, and no longer belong to that body. It would seem, therefore, to follow that they cannot possibly possess the title of trustees of an auxiliary branch of a body to which they do not belong, and from which they have been expelled. It is said, however, and the case was so pleaded to us, that although the pursuers do not now belong to the Ancient Order of Foresters, they continue incorporated as a friendly society as regards these funds, and are still entitled to the possession of their books, papers, and funds. I am of opinion that this contention is entirely untenable. The constitution of this great association is the following: The Ancient Order of Foresters are a very large Society, carrying on its business by districts and subordinate courts. The Society itself is registered as a Friendly Society under very elaborate and specific rules, providing for district courts, and courts subordinate to the district, affiliated by a series of very detailed regulations on the Head Society. The objects of the association were to establish funds for sickness, old age, and funerals, and for relief of widows or children of deceased members. Each district had the power of making rules for the management of its funds, and each subordinate Court might make its own rules for its own government, provided they were in accordance with the general rules of the Order, and of the district. In regard to the general benefit provisions, courts and districts are left to the management of their own funds. But in regard to the funeral fund, which is by far the most important, the provisions are very specific and detailed, the funds being supplied from the head office, and notice being sent of every death by the court or district to the head office. These rules, which are exceedingly important, are certified in ordinary form by the Registrar of Friendly Societies, The district to which Court Royal Archer 1544 belonged was the Greenock District, the laws of which were also certified by the Registrar. The rules provide for the government and constitution of the district, and for the Courts within the district, for returns to be made by each Court, and for penalties in the event of non-compliance. But the rules bear that these objects are to be carried out in strict conformity with and subject to the general laws of the Ancient Order of Foresters, as registered under the Friendly Societies Act 18 and 19 Vict. c. 63.

Court Royal Archer, No. 1544, has also rules certified by the Registrar of Friendly Societies, and the first of these is expressive of the object for which the Court is instituted, providing that it

shall be called Court Royal Archer, No. 1544, and shall form an auxiliary branch of the Greenock District of the Ancient Order of Foresters Friendly Society, and that the whole of the objects and rules of this Court shall be in conformity with and subject to the rules of the Greenock District Branch and the general laws of the Ancient Order of Foresters Friendly Society.

The conclusion I draw from this elaborate organization, provided for under rules which have the force of statute, is, that the subordinate Courts, as they are termed, of this Association, have no corporate or separate existence whatever apart from the general body. That this Court Royal Archer, which the pursuers profess to represent, if it ceased to be an auxiliary branch of the main body, ceased to have any corporate or separate existence, and that the pursuers, being expelled members of the general body, have no right whatever, as trustees, or in any other character, to the property and funds of Court Royal Archer, No. 1544.

It was argued that in regard to the funds other than the funeral funds, the Court Royal Archer was not dependent on the main body, but constituted a separate friendly society. But this is an entire mistake. They are a friendly society certified only as a subordinate Court subject to the laws and rules of the general body. Their power over their own funds arose from their general rules, and when they ceased to belong to the general body their power ceased also.

I am therefore of opinion that the present pursuers, who were elected after the suspension of the body, have no title of any kind to claim these documents, whatever may be the title of the defenders to retain them. They do not represent that corporate body to which the property belongs, and, as far as we see, they represent no body but themselves; and therefore I propose to sustain the first plea in law, and to find the pursuers have no title to pursue.

It must not be supposed from what I have said that the suspension or expulsion of this Court Royal Archer will operate any diversion of the property and funds from the original purpose for which they were contributed. The question we are now considering relates to administration only, and we merely decide that the pursuers are not entitled to possess or administer. It by no means follows that those who may have a title to possess and administer are entitled to divert the funds to the extent of a farthing from their original purposes. This is a matter into which it is not necessary that we should enter. At the same time, I may express a strong impression that no question of this kind can possibly arise. I have no idea that the expulsion of a member or a Court will carry the sick fund, or the widows, or the old age fund to any person who had no right to it before. If a new management is substituted for the old management, I agree with Vice-Chancellor Kindersley in the expression of opinion that the *cestui que trust* will remain the same, the trustees alone being altered. This is not the first time that the effect of an expulsion has come to be considered, and in the two cases to which we were referred, in the Court of Chancery in England, the Court refused to listen to the plea of an expelled branch that they were truly the Society, and required the custodian to deliver up books and papers to those appointed by the body which remained. No

doubt a question might arise which we do not need to resolve at present—whether, if no new management was provided, or if provided, was not in law entitled to administer the funds of the expelled branch, how these funds ought to be administered? It is possible in such a case that the Society might require to be judicially wound up, but in that case it would be necessary to have an application very different from the present, and supported by the individual members whose interests were involved. It is, however, perfectly plain that the pursuers, who even on their own statement are authorised by only a portion, and on the statement of the defenders only by a minority of the Society, and who pretend to no right to the funeral funds, cannot possibly make good any claim to administration of this property.

LORD NEAVES concurred, and said the plea of jurisdiction had with very great ingenuity been elided in this way. The pursuers say, We do not complain of anything; we have been well suspended and well expelled, and we stand upon a basis of our own as an independent friendly society, which has nothing to do with the Ancient Order of Foresters; no doubt we take the No. 1544, and call ourselves Ancient Foresters, but in truth we are very modern Foresters; we have been set up the other day. That is another aspect of the case. If they are not the Ancient Order of Foresters No. 1544, but are No. 1 of a new friendly society, we get into this other question, Where is your status as connected with the Ancient Order? His Lordship held that the pursuers had no *status* at all.

LORD ORMDALE also concurred, and regretted that such a litigation as had taken place here, and such an expense to which it had given rise, had occurred in reference to a friendly society such as this. So far as he could see the origin of the dispute was really a matter that ought not to have given rise to litigation at all.

LORD GIFFORD—I have found this question attended with very great nicety, and I am sorry to have the misfortune to have come to a somewhat different conclusion from the majority of your Lordships. It partially reconciles me to the conclusion that I understand your Lordships, by the judgment which is now to be pronounced, are not deciding any substantial question as to the property here, and that if there are beneficial rights with the accumulated funds of this society—money in the bank, or money arising or accumulated—no decision is pronounced as to whom the property belongs. Still the question raised by this action seems to me to be of very great importance. I think, looking at the three sets of laws, those of the High Court, the District Court, and the Greenock Branch, the Court Royal Archer No. 1544 was a separate and independent corporation. I think it was a dissenting society, which had the power to hold property, which could sue and be sued, and which could exercise all the functions of a friendly society, independent either of the Greenock District or of the Ancient Order of Foresters, the general body. Therefore, while it was no doubt affiliated to the general body, I cannot hold that the general body was the friendly society. The friendly society was the Court Royal Archer No. 1544, and in this question that

order alone. It appears to me that the suspension did not disincorporate the society. It was still a friendly society, and was still entitled to do certain acts. It was an affiliated society—the affiliation of which was for a time suspended. But it did not kill the child, and put an end to its life altogether. Still less—that is where my difficulty became stronger—did it deprive it of this property, and put the whole funds, which may be very large, into the hands of the Greenock District Court, or of the Ancient Order, or whatever else its head may be termed. It was a suspended friendly society—suspended from connection with the general body, but still existing. I do not think the High Court were ever intended to be vested with the power to take the property of any individual Court and to hold it for any new body under the same name. In short, the power of issuing a dispensation is not a power of incorporation. That is a power which the Legislature alone can give. The difficulty about having two friendly societies bearing the same name is just an anomaly which we must deal with in coming to a decision affecting the substantial question between the parties. Accordingly, as I read the law, provision is actually made for a district society seceding from the general body and still continuing to be a society.

Counsel for Pursuers and Reclaimers—Scott. Agents—M'Caul & Armstrong, S.S.C.

Counsel for Defenders and Respondents—Guthrie Smith and M'Kechnie. Agent—William Archibald, S.S.C.

Tuesday, November 24.

## SECOND DIVISION.

### SPECIAL CASE FOR W. R. SANDBACH AND OTHERS.

#### *Marriage-Contract—Construction—Vesting.*

Terms of antenuptial contract of marriage under which a sum of money constituting the trust-fund held not to have vested in the issue of the marriage during the survivance of either of the spouses.

The parties of the first part to this case were the Trustees under the marriage-settlement of the late G. Parker of Fairlie House, Ayrshire; the parties of the second part were the Trustees and Executors under the will of Mrs Parker.

The facts were as follows:—George Parker died in 1860, survived by his spouse, by a son, and a married daughter. The son, who was imbecile, lived until the age of twenty-two, and died unmarried in 1864. The daughter married in 1860, and died in 1863 without leaving issue. Mrs Parker died in 1873.

No deed of appointment was executed by either of the spouses. George Parker by will bequeathed the whole of his property to his wife. Mrs Parker by will left the sum of £6000, mentioned in the marriage-contract, to certain parties named. This was the sum in dispute, and the questions submitted for the opinion of the Court were:—“(1) Whether under the terms of the said marriage settlement, the said Charles Edward Parker and Ada Parker or Corbett, or either of

them, had a vested interest in or became absolutely entitled to the said sum of £6000, or any part thereof? (2) Whether, under the terms of the said marriage settlement and the will of the said George Parker, the said Mrs Anne Traill or Parker had the absolute right to the said sum of £6000?”

The antenuptial contract of marriage between Mr and Mrs Parker was in the English form, and provided, *inter alia*, that the sum of £6000 paid to the trustees by Mr Parker was to be held “from and after the decease of either of them, the said George Parker and Anne Traill, upon trust, to pay the interest and annual produce of the said trust monies and securities unto, or authorise the same to be received by the survivor of them, the said George Parker and Anne Traill, or his or her assigns, during his or her life, for his, her, and their own benefit, and from and after the death of the survivor of them, the said George Parker and Anne Traill, upon trust, if there shall be any child or children of the said intended marriage, to pay, assign, and transfer the said trust monies and securities to, between, and among such child or children, or the issue of any of the same child or children, such issue being born in the lifetime of the said George Parker and Anne Traill, or the survivor of them, in manner following (that is to say),—the same to become and be vested in such child or children, or other issue respectively, and to be paid, transferred, or assigned to him, her, or them respectively at such age or respective ages, in such manner, and if more than one, in such shares and proportions as the said George Parker and Anne Traill shall by any deed or deeds, writing or writings, with or without power of revocation, to be sealed and delivered by them in the presence of one or more witness or witnesses, jointly direct and appoint; and in default of such joint direction or appointment, or so far as the same, if incomplete, shall not extend, then as the survivor of them, the said George Parker and Anne Traill, shall, after the decease of the other of them, by any deed or deeds, writing or writings, with or without power of revocation, to be sealed and delivered by him or her, or by his or her last will and testament in writing, to be by him or her signed and published in the presence of one or more witness or witnesses, direct and appoint: and for want of any such direction or appointment as aforesaid, or so far as the same, if incomplete, shall not extend, to, between, or among such child or children of the said George Parker and Anne Traill, in manner following (that is to say),—if there shall be but one such child, the said trust monies and securities to vest in such only child, being a son, at his age of twenty-one years, or being a daughter, at her age of twenty-one years, or on the day of her marriage, which shall first happen, and be paid, transferred, or assigned to him or her on or at the same age, day, or time, if the same shall happen after the decease of the survivor of them the said George Parker and Anne Traill; but if the same shall happen in the lifetime of them, or of the survivor of them, then immediately after the decease of such survivor; and if there shall be two or more such children, then the said trust monies and securities to vest in and be paid to, between, or among such two or more children in equal shares and proportions, the share or shares of such of them as shall be a son or sons to vest in him or them respectively at his or their age or respective ages of twenty-one years, and the share or shares of such of them as