

liferenter. If the direction were followed by a clause of survivorship or by a destination-over applicable to the term of payment, as in the case of *Young v. Robertson*, February 14 1862, 4 Macq. (H. of L.) 314, that would make all the difference, because there vesting would, according to another settled rule, be absolutely prevented. The provision in that case would in substance be that the legatee should survive the term of payment, and failing his doing so that others should take. But where there is neither a clause of survivorship nor a destination-over vesting takes place with a clause such as occurs in the present deed. The rule is so stated not only in the cases to which I referred in the case of *Snell's Trustees*, but also in the case of *Bryson's Trustees v. Clark*, November 26, 1880, 8 R. 142. So also in the case of *Stodart's Trustees*, March 5, 1870, 8 Macph. 667, although that case was very special in its circumstances, and is perhaps open to the observation that the judgment is not quite consistent with a number of other authorities. These considerations are sufficient to dispose of this case if there were no clause of survivorship.

In regard to the clause of survivorship which here occurs, it must be observed it is not in the terms generally understood by a clause of survivorship. If it had been so—if it had been similar to that which occurred in the case of *Young v. Robertson*, 4 Macq. 314—if the bequest had been followed by such words as these, viz., declaring that “if any of the said residuary legatees shall die without leaving lawful issue, the same shall belong to and be divided equally or share and share alike among the survivors of my said nephews”—then the vesting would have been suspended till the term of payment. Such a clause would be referable to the term of payment, so that payment would only be made upon condition that the beneficiaries were then in life; and the same rule would hold in the case of a destination-over. In the present case there is no clause of survivorship applicable to the term of payment. The condition contained in the clause of survivorship is one applicable to the legatee himself alone, and this the simple one that he shall attain the age of twenty-one. But there is no reference whatever to the term of payment of the bequest as in the cases to which I have alluded. An argument was maintained by Mr Gillespie to the effect that the qualification must be read into and carried over to the clause regulating the term of payment so that the clause should be taken to mean shall attain the age of twenty-one and survive the term of payment; but I decline to read any words into the deed. The bequest, no doubt, would pass to the survivors of any nephew dying before twenty-one years of age, but the clause imposes no further condition suspensive of vesting after the death of the testatrix. And so, upon the whole matter, I am of opinion that the estate vested in the nephews upon the death of their aunt, subject only to the condition that they should have reached the age of twenty-one years.

The next question is, whether the *conditio si sine liberis* applies to a legacy of furniture and of pictures. But I am of opinion that such a legacy does not partake of the nature of a provision, and therefore following the view taken by this Division of the Court in the case of *Wauchope and Others (Brown's Trustees)*, that the fourth question ought to be answered in the negative, and the fifth in the affirmative.

I am also of the same opinion with your Lordships as regards the matter of the payment of legacy duty which is raised by the seventh question.

The Court pronounced the following interlocutor:—

“Find and declare that the third part or share of the residue of Miss Mary M'Alpine's estate destined to Walter M'Alpine vested in him on his attaining the age of twenty-one years complete and is now payable to his representatives: Find and declare that the third part or share of the residue of Miss Mary M'Alpine's estate destined to Charles Hunt M'Alpine who predeceased Miss Margaret M'Alpine vested in him on his attaining the age of twenty-one years complete, and is now payable to the third parties as his testamentary trustees: Find and declare that John William M'Alpine is entitled to the whole silver-plate, furniture, linen, books, and other effects bequeathed (1) by the codicil, dated 16th February 1867, to the settlement of Miss Helen M'Alpine, and (2) by the codicil, dated 16th February 1867, to the settlement of Miss Margaret M'Alpine, as the only one of the legatees thereof who survived Miss Margaret M'Alpine: Find and declare that the said John William M'Alpine, is held entitled to both the said bequests of silver-plate, furniture, &c., without deduction for legacy-duty thereon, and decerns.”

Counsel for First Party—Gillespie. Agents—Gillespie & Paterson, W.S.

Counsel for Second and Third Parties—Gloag. Agents—Macritchie, Bayley, & Henderson, W.S.

Counsel for Fourth and Fifth Parties—Mackay. Agents—Lindsay, Howe, & Co., W.S.

Friday, December 22, 1882.

FIRST DIVISION.

SPECIAL CASE—WAUCHOPE AND OTHERS,
(BROWN'S TRUSTEES).

Succession—Accretion—Conditio si sine liberis.

A testatrix by a codicil to her settlement directed that her plate and pictures should at her death be equally divided among her five children. She was predeceased by her sons George and Robert, the latter of whom had issue. *Held* (1) that such a bequest did not accrete to the co-legatees; (2) that the *conditio si sine liberis* did not apply to such a bequest; and (3) that therefore these two lapsed shares fell to be distributed according to the directions in the residuary clause of the settlement.