tinguished, gave him no title to the price of that which, although formerly a pertinent of these lands, was no longer so at the date of the conveyance in his favour. To put the pursuers in the position of creditor in the obligation in question something more was necessary than the title to the lands; there was needed an assignation to the debt. This, however, the pursuers or their author never had, and in this view of the case I think the pursuers have no title to sue—that is, to receive the amount sued for.

On the other hand, if the annual payment is only a charge on what previously existed—if it is the substitution of a fixed sum payable at a fixed annual term in place of a sum to be ascertained each year according to the circumstances of the time—then the pursuers' claim is one still for multures. It is still the claim which the proprietor of the mill has against the suckeners. No multures, however, are due or exigible unless there exists a mill to which the suckeners may resort for the grinding of their grain; and here there is no longer any mill, consequently there can be no claim for multures. I see nothing in the deed of submission or in the decree-arbitral which entitles the proprietor of the mill to claim multures, or any fixed amount payable in place thereof in the event of the mill ceasing to exist. Both deeds plainly contemplate that the mill will be maintained. More than that, the narrative of the deed of submission, in which it is stated that the proprietors of the mill "are willing to take the whole responsibility of keeping up and supporting the intake and aqueduct to the mill," may fairly enough be read as imparting an obligation on them to keep up the mill. The mill, including the intake and aqueduct, was partly maintained by the suckeners. It was for that they gave the "services" along with the multures. But the proprietors of the mill, by the deed of submission agreed to, have a sum fixed to cover multures, sequels, and service—that is, to take one payment in lieu of their various claims against the suckeners, and thenceforward to relieve the suckeners not only of the multures but of the service also. Now, it can scarcely be supposed that the suckeners were compounding in money for services which were never to be rendered—paying, that is, for work which was never to be done.

The statement in the narrative of the deed of submission amounts to this, that in addition to their obligation as proprietors of the mill, relative to its maintenance, they undertook in addition the obligations thereanent incumbent on the suckeners, in consideration of the annual payment or compensation to be fixed by the arbiter. Their obligations in reference to the maintenance of the mill was in no way diminished or discharged; they were, on the contrary, increased as matter of agreement.

I think the fixed annual payment was to come in place of the then existing obligations binding on the suckeners; but it did not discharge the mill proprietor of the corresponding obligation upon him to keep up the mill, on the fulfilment of which depended his right to enforce the obligation by the suckeners to him.

The Court recalled the Lord Ordinary's interlocutor, sustained the defender's 4th plea-in-law, and assoilzied him from the conclusions of the summons.

Counsel for Pursuers and Respondents—H. Johnston—W. Campbell. Agents—Skene, Edwards, & Garson, W.S.

Counsel for Defender and Reclaimer—D.-F. Balfour, Q.C. — Guthrie Smith. Agents—Macrae, Flett, & Rennie, W.S.

Thursday, July 14.

SECOND DIVISION.

PEARSON (REEVE'S EXECUTOR) *v.* PEARSON AND OTHERS (REEVE'S TRUSTEES).

Succession—Vesting—Destination-over.

A testator directed his trustees to pay the liferent of his estate to his widow, under burden of maintaining his unmarried daughters and such of his sons as should require assistance; after her death to pay an annual sum equally to his sons, and the balance of income equally among his unmarried daughters, while two remained unmarried; after the death of the widow and the death or marriage of all the daughters but one, to dispone to his sons certain heritable subjects, but each under the burden of an annunity of £15 to the surviving daughter, and to pay "to each of my daughters, married and unmarried, without restriction, and not exclusive of the *jus mariti* of their husbands, the sum of £1500 sterling at the first term of Whitsunday or Martinmas after the death of my wife, and after the death or marriage of all my daughters but one; and it is hereby specially provided and declared that the issue of a daughter predeceasing the period for payment of the aforesaid provision of £1500 shall have right equally among them to their mother's provisions." The sons were appointed residuary legatees.

The testator was survived by his widow, one son, and three daughters. After the death of the widow and a daughter, the second daughter died leaving a settlement disposing of her share of her father's estate.

In a question between her executor and the representatives of her brother, the residuary legatee—*held* (Lord Young *diss.*) that a legacy or provision of £1500 from her father's estate did not vest in her, and that the sum of £1500 continued to form part of the residue of her father's estate.

Thomas Reeve of Edenpark, Cupar-Fife, died upon 2nd August 1843. He left a

general trust-disposition and settlement dated 23rd June 1836. By this settlement he disponed his whole estate, heritable and moveable, to trustees, and directed them after payment of his debts to secure the liferent use of it to his widow, declaring that she should be bound to educate and maintain the daughters so long as they remained unmarried, and any of the sons who might require such assistance, and after her death to pay to each of the sons who should be of age the sum of £100; Fifth, the trustees were directed to pay to the unmarried daughters while two of them should remain unmarried the balance of the income; Sixth, the trustees were directed after the death of the widow and the death or marriage of all the daughters but one, to dispone to each of his two sons the heritable subjects specified in the settlement, but each under the burden of an annuity of £15 to the surviving daughter. The seventh purpose was as follows—"I hereby direct my said trustees, from the trust funds and estate hereby made over to them, other than the subjects directed to be conveyed to my said sons Thomas Campbell Twiss Reeve and John Milward Reeve, to secure to each of my daughters, married and unmarried, the sum of £1500 sterling, to be paid at the first term of Whitsunday or Martinmas after the death of my wife, and after the death or marriage of all my daughters but one, the said sum of £1500 to be settled upon my said daughters so as to exclude the *jus mariti* or right of administration of any husband they may marry, and not to be affectable for his debts or deeds; and it is hereby specially provided and declared that the issue of a daughter predeceasing the period for payment of the aforesaid provision of £1500 shall have right, equally among them, to their mother's provision."

Upon 22nd June 1840 Mr Reeve executed a codicil to his settlement. By this he declared—"And further, I do hereby revoke and recal the directions to my trustees contained in the seventh purpose of the foresaid trust, and in lieu and place thereof I do hereby direct and appoint them, from my trust funds and estate (other than the subjects directed to be conveyed to my sons Thomas Campbell Twiss Reeve and John Milward Reeve), to pay to each of my daughters, married and unmarried, without restriction, and not exclusive of the *jus mariti* of their husbands, the sum of £1500 sterling at the first term of Whitsunday or Martinmas after the death of my wife, and after the death or marriage of all my daughters but one; and it is hereby specially provided and declared that the issue of a daughter predeceasing the period for payment of the aforesaid provision of £1500 shall have right, equally among them, to their mother's provisions."

The trustees nominated by these deeds were now deceased or had declined office, and the trust-estate was vested in David Pearson, C.A., Edinburgh, as judicial factor appointed by the Court on 16th August 1888.

Mr Reeve was survived by his widow, three daughters, and one son, John Milward Reeve. A daughter, Isabella Reeve, was married, and died in 1871 leaving issue. Mrs Reeve, the widow, died on 19th January 1868, and the event contemplated by the settlement, viz., the death or marriage of all the daughters but one, occurred by the death of Helen Harriot Reeve on 29th July 1891 unmarried. Barbara Jane Reeve was now the only child of the testator alive, as his son John Milward Reeve was also deceased.

Helen Harriot Reeve left a general settlement, by which she appointed David Pearson, C.A., as her executor and trustee.

This special case was now presented by (1) David Pearson, Helen Reeve's executor, and (2) David Pearson, as judicial factor foresaid, and Walter Thomas Milton and others and the trustees of the late John Milward Reeve, the parties admittedly now in right of the residue of Thomas Reeve's trust-estate.

The questions of law stated were—"(1) Did a legacy or provision of £1500 from the estate of the said Thomas Reeve vest in the late Miss Helen Harriot Reeve? And if so—(2) At what date did the said legacy or provision become payable? (3) Is interest due on the said legacy or provision from the date when it became payable; and if so, at what rate? Or (4) Does the said sum of £1500 continue to form part of the residue of the trust-estate belonging to said trustees of said John Milward Reeve?"

The first party argued—The general rule ought here to apply, that Helen Reeve's share had vested in her *a morte testatoris*, because there was no clause of survivorship or destination-over—*Bryson's Trustees* v. *Clark*, November 26, 1880, 8 R. 142 (Lord President, 145). A mere direction to pay at a future period will not postpone vesting—*Young* v. *Robertson*, February 14, 1862, 4 Macq. 314; *Douglas* v. *Douglas*, March 31, 1864, 2 Macph. 1008. Assuming, however, that the clause in the codicil was equivalent to a destination-over, still it must be held that Helen Reeve took a vested right in this legacy subject to defeasance in the case of her dying and leaving issue—*Hay's Trustees* v. *Hay*, June 19, 1890, 17 R. 961; *Steel's Trustees* v. *Steel*, December 12, 1888, 16 R. 204; *Haldane's Trustees* v. *Murphy*, December 15, 1881, 9 R. 269. In this case the view of the majority was discarded in the House of Lords—*Murray, &c.* v. *Gregory's Trustees*, January 21, 1887, 14 R. 368—reversed in *Gregory's Trustees* v. *Alison*, April 8, 1889, 16 R. (H. of L.) 10; *Gilbert's Trustees* v. *Crerar and Others*, November 3, 1877, 5 R. 49—reversed in *Taylor* v. *Gilbert's Trustees*, July 12, 1878, 5 R. (H. of L.) 217; *Snell's Trustees* v. *Morrison*, March 20, 1877, 4 R. 709; *Forbes* v. *M'Condach's Trustees*, December 12, 1890, 18 R. 230; *Maxwell* v. *Wylie*, May 25, 1837, 15 S. 1005; *Logan's Trustees* v. *Ellis*, February 7, 1890, 17 R. 425; *Dalgleish's Trustees* v. *Bannerman's Executors*, March 6, 1889, 16 R. 559; *Lindsay's Trustees* v. *Lindsay*, December 14, 1880, 8 R. 281. The law of England was to the same effect—*in re Burnett's Trust*, March 11, 1857, 3 Kay &

Johnson, 280; *Struther* v. *Dutton*, November 25, 1857, 1 De Gex & Jones, 675.

The second party argued — The legacy of £1500 did not vest till the term of payment; that was not until the death or marriage of all the daughters but one after the death of the mother; it therefore did not vest in Helen Reeve, before whose death it could not be payable, and so fell back into the residue of Thomas Reeve's estate—*M'Alpine, &c.*, March 20, 1883, 10 R. 837; *Waters' Trustees* v. *Waters*, December 6, 1884, 12 R. 253; *Laing* v. *Barclay*, July 20, 1865, 3 Macph. 1143; *Stodart's Trustees*, March 5, 1870, 8 Macph. 667; *Muirhead* v. *Muirhead*, May 12, 1890, 17 R. (H. of L.) 45; *Ross' Trustees*, December 18, 1884, 12 R. 378; *Fyfe's Trustees* v. *Fyfe*, February 8, 1890, 17 R. 450.

At advising—

LORD JUSTICE-CLERK—The late Mr Reeve by a codicil to his will, by which he left his estate to trustees, directed — "And farther, I do hereby revoke and recall the directions to my trustees contained in the seventh purpose of the foresaid trust, and in lieu and place thereof I do hereby direct and appoint them from my trust-funds and estate (other than the subjects directed to be conveyed to my sons Thomas Campbell Twiss Reeve and John Milward Reeve), to pay to each of my daughters, married and unmarried, without restriction, and not exclusive of the *jus mariti* of their husbands, the sum of £1500 sterling, at the first term of Whitsunday or Martinmas after the death of my wife, and after the death or marriage of all my daughters but one; and it is hereby specially provided and declared that the issue of a daughter predeceasing the period for payment of the aforesaid provision of £1500 shall have right equally among them to their mother's provisions." By his will he left the residue of his estate to his sons, born or to be born.

The circumstances which have given rise to the present question are these. The testator had three daughters who survived him. One married and died leaving issue. One died unmarried. One still survives, and thus the event has occurred which in the clause I have quoted is signified as the event on the occurrence of which payment is to be made to daughters, and as it happens to one daughter only and to the issue of a predeceasing married daughter.

The question raised is, whether under the words of the codicil the sum of £1500 vested in the unmarried daughter, who is dead, so to be carried by her will, or whether the £1500 which might have fallen to be paid to her forms part of the residue of Mr Reeve's estate, she having died unmarried before the occurrence of any one of the possible events contemplated as being the period of payment or distribution.

The argument on behalf of the trustee and executor is that a bequest of £1500 vested in the deceased unmarried daughter *a morte testatoris*, and became payable on the death of the widow, and the death or marriage of all her sisters but one, and that accordingly it is carried by her will to her executor.

I am of opinion that this contention is unsound. I do not consider it to be consistent with any natural reading of the clause itself, and I find nothing in the will or codicil to indicate intention on the part of the testator that there should be such vesting. The scope of the truster's provisions for daughters is that while his widow survives and enjoys her liferent she is to maintain them; on her death and as long as two remain unmarried the whole of the daughters are to receive equally the free rents, interest, and produce of the estate, except a small fixed annuity to their brothers, and that on the event occurring of only one daughter remaining unmarried then £1500 is to be paid to each daughter, and £1500 to the children of any daughter predeceasing that event. Thus the daughters were provided for with certainty during their lives, and if they married, their issue provided for in the event of their death. If none of them should marry, then the period of payment could not come till all were dead but one. If, then, it were to be held that vesting took place *a morte testatoris* it would be necessary to read the codicil as meaning in one contemplated event, that in respect of the death of A B, leaving only one sister surviving, payment is to be made to A B, and to her sisters who predeceased her, of the sum of £1500 to each of them. I do not know of any such reading of a bequest being adopted where another and perfectly natural reading can be given to the words. It appears to me that they mean, taken along with the rest of the testamentary writings, that on a certain event occurring which puts an end to daughters unmarried living together, the annual payment of produce is to cease, and payment is to be finally made to those then alive of a sum of £1500 each, and £1500 to the children of any predeceased. It seems to me that any other reading is constrained and unnatural, and necessitates the assumption that a testator intends to make a bequest to the same person whose own death may be a condition of the bequest coming into operation. A direction to pay to a daughter on that daughter's death would, if so expressed, be a surprising provision. But that is what is expressed in this provision if the words "pay to each of my daughters, married and unmarried," mean that in the possible event of the period of payment arising by the death of the second last unmarried daughter—the event which actually occurred—that daughter were held to have by the bequest a vested interest *a morte testatoris*. For it is only from the order to pay in a certain event that the vesting is to be implied.

In the view I take it is unnecessary to consider any question of vesting subject to defeasance. I have had an opportunity of reading the opinion of my brother Lord Rutherfurd Clark, in which I concur, and therefore I have only briefly stated my views upon the question. I come to the

conclusion that the reading of the codicil which is consistent with its words, and which presents no startling character of bequest, but is quite consistent with every reasonable object the testator can have had in his mind, is the true reading, and that it should be adopted accordingly.

LORD YOUNG—This is a peculiar case, that is to say, the settlement of which we are asked to declare the import is a peculiarly drawn document, and on that account the question is not so interesting as it might otherwise have been, but the case is no doubt one of importance to the parties, and the decision of it involves considerations of some general interest. Put abstractly, the question is, whether a legacy or provision of £1500 did or did not vest in Miss Helen Harriot Reeve, who died on 29th July 1891. Mr Reeve, her father, left a trust-disposition and settlement, and also a codicil, and the answer to the question depends on the construction and import of the provision in the codicil which your Lordship has read. I understand it to be maintained, in the first place, that on a construction of the words which precede the special declaration regarding the issue of a predeceasing daughter, the provision is inconsistent with vesting *a morte testatoris*, and I understand it to be maintained further that even if these words taken by themselves import vesting *a morte testatoris*, the special provision which follows in favour of the issue of a predeceasing daughter, suspended vesting as being a provision of the nature of a substitution or destination-over. I think it may be convenient to consider these two points separately, although there can be no objection to considering them in combination also—and accordingly I proceed in the first place to consider whether the words which precede the special provision in favour of issue do or do not import vesting *a morte testatoris*.

Now the provision here is in the form—and most properly in the form—of a direction to trustees. I say most properly in the form, for we not unfrequently meet with trust-deeds in which the testator conveys his whole property to trustees for purposes to be named, and then in a subsequent part of the deed goes on to make provisions by way of direct gift to the legatees regardless of his former divestiture in favour of the trustees. That is inaccurate conveyancing. It is, I think, Lord St Leonards who expresses the difference between the two things by saying that a man who has disposed of his property by means of directions to trustees is not "his own conveyance" or is not "his own conveyancer"—the statement is expressed in both ways in the books. What he means is, that there is a difference between a testator who makes a gift by way of direct conveyance to the beneficiary, and one who merely expresses his will by directing his trustees to do what is necessary to convey the subject to the beneficiary. In the former case—where the man is his own conveyance or conveyancer, all the technicalities of conveyancing come in, but where the testator merely expresses his will by giving directions to trustees, a much wider latitude of construction is permitted in judging of the meaning of his settlement. I make these observations because of the remark which is often made in such cases, and was I think made here, that a direction to trustees to pay is not such a distinct indication of the testator's intention to benefit the legatee as is found where the legacy is in the form of a direct gift to the legatee. I think that the testator here took the proper course, for he had previously divested himself of his whole estate in favour of his trustees and consequently a direction to them to pay the money when the period of payment arrived was the proper form to adopt.

The direction is thus expressed, confining it to the particular branch of the argument with which I am at present dealing—the trustees are directed "to pay to each of my daughters . . . . the sum of £1500 sterling at the first term of Whitsunday or Martinmas after the death of my wife." Now, suppose that the direction had stopped there what would have been the period of vesting? There is no doubt—it is too clear for argument—that vesting would have taken place *a morte testatoris*, and that in accordance with the rule that vesting is held to take place *a morte testatoris* unless there is something to the contrary, and it is nothing to the contrary that the period of payment may not and does not arrive until after the death of the legatee. A sum of £1500 therefore vested on the death of the testator in each one of his daughters who survived him, although payment is not to be made until the death of their mother, so that with respect to the sum left to any one of the daughters who should die before her mother, since it cannot be paid into the daughter's own hand because her hand is in the grave, it will go to her representatives, legal or voluntary, and as it was possible that all the daughters might have predeceased their mother, it might have happened that the shares of all of them would have come to be paid to their representatives legal or voluntary.

But the provision which I am now considering does not stop with the words which I have just quoted, for the direction is to pay at the first term of Whitsunday or Martinmas after the death of my wife, "and after the death or marriage of all my daughters but one." Now, do these words "after the death or marriage of all my daughters but one" make any difference in the result which would have been reached had these words been absent? I put the case of all the daughters dying in the lifetime of their mother, in which event their legacies would have passed to their representatives legal or voluntary, and the only material point in the additional words which I am now considering is that they show that payment may not take place until after the death of the legatee, but I do not think that that interferes with vesting in the least. It was said—and I rather think your Lordship's language gives some countenance to the

view—that the provision is to be regarded as a provision for payment after the death of the legatee. I am unable so to read it. The period of payment is not the death of the legatee, although I know nothing in the world to prevent a testator from directing his trustees to keep a legacy in their own hands until the first term of Whitsunday or Martinmas after the death of the legatee. It will in that event have to be paid to the representatives—legal or voluntary—of the legatee. I know nothing to prevent a testator from giving such a direction, the meaning of which is that payment is to be made not to the legatee but to the representatives of the legatee. But if any inference adverse to vesting is to be drawn from a direction to pay at the first term after the death of the legatee, you have not got such a direction here. You have one period of payment and one only for all the daughters. Suppose that they had all married in the lifetime of their mother—when in that event would have been the period of payment? It would have been the death of the mother, at which date it was possible that none of the daughters would have died, yet they would have received payment. But the cases which I have figured show that the law is not startled by the fact of payment of a legacy having to be made to the representatives of a deceased legatee. Suppose then that all the daughters had died in the lifetime of their mother, unmarried and therefore childless, is it to be said that the testator's son is to be substituted to their legacies and no account taken of their legal or voluntary representatives? I cannot assent to that. I think the case is similar to those which I began putting, and with respect to which the law is not doubtful. It so happened that it was the death of the legatee which brought about the period of payment, but that was an accident. It might have arrived, as I have said, before the death of any of the daughters, and it might not have arrived until after they had all died.

I have now to consider the special provision and declaration "that the issue of a daughter predeceasing the period for payment of the aforesaid provision of £1500 shall have right equally among them to their mother's possessions." Now I think that this declaration does not come within the rule relative to a destination-over. I think it is of the nature of a special declaration with respect to a contingency which may or may not happen, and which here in point of fact did not happen. If a testator directs that if his daughter should die before any event you chose to figure leaving issue, or it may be leaving boys only and not girls, or girls only and not boys, then the issue, or the boys or the girls, are to take their mother's legacy. I think that is not a case of a proper destination-over, but is merely a special declaration with reference to a contingency which may or may not happen, and that it cannot interfere with vesting in the daughter if that is the result of the preceding parts of the deed, as I think it was here. Now, that is the whole case. It is a declaration that if any of the testator's daughters should die before the period of payment leaving issue, then in that event, and in that event only, the rule that her legacy should go to her representatives—legal or voluntary—shall not apply, but the trustees shall pay it to her children. Therefore, without entering upon any technical discussion about vesting and divesting, I give effect to that construction as being the will of the testator, which I am satisfied it was. If the daughter here had left children, I should then have held that there was a direction to the trustees to pay to these children, the ordinary rule of vesting, which gives the legacy to the representatives, legal or voluntary, of the legatee, being in that event displaced in favour of a direction to pay to the children of the legatee.

I have thus come to the conclusion that vesting took place *a morte testatoris*, and that the period of payment was fixed by the death of the daughter whose death brought the period of payment forward.

LORD RUTHERFURD CLARK—The question is, whether Miss Helen Reeve took a vested interest in the sum of £1500 bequeathed by the codicil?

The form of the legacy is a direction to pay on the occurrence of an event which did not happen in the lifetime of the legatee. But this is not conclusive, for I recognise the soundness of the rule which received effect in the case of *Hay's Trustees*, where it was held that a legacy in this form may vest *a morte testatoris*, provided nothing appears to show a contrary intention. Such a bequest is regarded as absolute though the payment is postponed.

But we are not dealing with that simple case. Putting aside the event of marriage for the present, the term of payment is fixed by the life of the legatees, a circumstance which at once creates a material difference between the present case and that of *Hay's Trustees*. There it was uncertain whether the legatee should or should not survive the event on which the legacy was payable, viz., the death of a liferenter. But it was possible that he might, and that the payment might be made to him personally. Here it is certain that the trustees could pay to no daughter but one, and until the death of Helen it was uncertain who should be that one.

I find great difficulty in supposing that the testator intended the legacy to vest at his death. Considering that a daughter who died before the term of payment could have no personal enjoyment of the legacy, such vesting would amount to a mere power of disposing after death, to the prejudice of the rights of the testator's residuary legatees. I see nothing to indicate that the testator meant to create such a right, more especially when I find that he made a special provision for the maintenance of his unmarried daughters until the term of payment arrived. I cannot imagine that he intended to provide for a daughter when all necessity for a provision ceased, or that he meant to give her the

power of disposing of a fund of which he denied her all personal enjoyment.

But it was pointed out that the direction is in favour of "each of my daughters," and it was maintained that these words receive no meaning if the benefit of the bequest is confined to one. There would, to my mind be great force in the argument if there was no case in which each of the daughters could take. But it was possible. For the payment is to be made on the marriage as well as on the death of all the daughters but one, and if two were married, and all survived the widow, it is plain that each would be entitled to a legacy of £1500.

It was further urged that inasmuch as there was but one direction, though conditional on two different events, its words must receive precisely the same construction with reference to each event. I am disposed to think that this argument is well founded; but I cannot hold as a necessary inference that the direction must be read as making an absolute gift to each daughter with a postponed term of payment. To read it in that sense is to hold that the testator bequeathed a legacy to his daughter coupled with the declaration that it was not to be paid to her till her death. It is open to serious doubt whether such a legacy could have had any legal effect. But I do not think that we would be justified in putting such a meaning on any will unless the words would bear no other. I give the direction the only sensible meaning which I think it can bear when I construe it as in favour of such daughters only as survived the term of payment.

To my mind this is the only admissible construction, and it becomes the necessary construction when we have regard to the destination in favour of the issue of a predeceasing daughter. In the ordinary case a declaration that the issue of a child shall take the parent's share does not prevent vesting *a morte testatoris*. For it is merely the expression of what the law would imply, and it is read as referring to the case of a parent predeceasing the testator. Here such a construction is impossible, for the destination is expressly in favour of the issue of a daughter who has predeceased the term of payment, which necessarily includes the case of her surviving the testator. There is therefore a conditional institution of her issue, or a destination-over in favour of the issue in case of the parent dying before the term of payment. The issue would take in their own right, and not as the heirs of their mother. The case therefore falls within the rule of *Bryson's Trustees* and not of *Hay's Trustees*.

It is true that the destination-over is conditional, but only in the sense that until the death of the legatee it is uncertain whether the destination will take effect. There is not the less a destination-over. But when I hold that a married daughter who predeceased the term of payment and had issue could not take a vested interest, the case is, I think, decided. For an unmarried daughter cannot be in a different position. The rights conferred on the daughters are precisely equal, for they are constituted by precisely the same words.

There is no room for the doctrine of vesting subject to defeasance, for in my opinion nothing vested in the daughters.

LORD TRAYNER—I concur in the opinion just delivered by Lord Rutherfurd Clark. I would like to say in addition, that having regard to the whole scope of the deceased's testamentary writing, I gather it to have been his intention that his daughters should take no vested right in the sums directed to be paid to them unless they survived the period of payment. It was in the testator's mind, in the first place, to provide for his family so long as they lived in family together. Accordingly he directed the interest and produce of his whole estate to be paid to his widow during her lifetime, putting upon her the burden of maintaining and educating the children. After his widow's death, and so long as two or more of his daughters survived unmarried, the revenue of the estate was to be paid to them, subject to an annuity of £100 to go to two sons who were named, and the aliment and education of his other sons if there were any. On the death or marriage of all his daughters but one the estate was to be distributed. There was no use keeping up a family establishment for one unmarried daughter, and accordingly when the family reached this condition the shares of the estate provided to the children were to be paid over, so that each had his or her own share. But if a daughter predeceased the term of payment leaving issue, it was the desire of the testator that such children should take their predeceasing parent's share; and this was so declared as showing the testator's intention to favour such children rather than the predeceasing child's representatives other than children. In short, if a daughter predeceased the term of payment leaving issue, that issue took the parent's share in preference to anybody else; but if the daughter predeceased the term of payment without issue, the testator intended the share which would have gone to that daughter had she survived, to go to his residuary legatee rather than to anyone to whom the daughter might have wished to leave it. The daughter had been provided for during her lifetime, and if she predeceased the term of payment took nothing and could test on nothing. This I take to be the testator's intention, and it is given effect to by the judgment which your Lordships now propose to pronounce.

The Court answered the first question in the negative, and the fourth in the affirmative, and found it unnecessary to answer the second and third.

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Counsel for the Second Party—Guthrie—Irving. Agents—Macrae, Flett, & Rennie, W.S.