

Defendant sought also to escape from his own agreement by suggesting that it was that of his wife, under such facts known to plaintiff as to disentitle him to succeed here. In this his evidence failed to make out what he seemed to desire to contend for.

The point chiefly relied upon by the defence was that plaintiff claimed title through the executors of the will of his father, and that by the will the title in question was vested in the executors as trustees, subject to such trusts as made it impossible for them lawfully to convey the land in question to plaintiff, as they did by the deed of 20th March, 1888, to plaintiff.

It was insisted that the testator by this will intended that the trustees should sell, and only after sale divide the proceeds, and that such division must be postponed so as to cover a period of time longer than had transpired before this conveyance was made.

The trust is quite clear, I think.

The trustees were given a discretion to retain the fund in their own hands "for an indefinite period," but permitted to pay over as and when they saw fit. And they having satisfied themselves that the time for division had come, I see no necessity for their going through the form of selling and realizing before making the division. It is the case of the beneficiaries in a simple trust being entitled, when the time for distribution has come, to have the legal estate vested in them or conveyed as they direct. Here the two beneficiaries agreed upon the division that was, as to plaintiff's share, carried out by the execution of the deed already mentioned. When the trustees determined that the time had come for this division, they had no right to sell against the will of the beneficiaries, who were entitled to take the estate without conversion if they saw fit. . . .

It is pointed out that there is a gift over, but this is only in the event of all the direct beneficiaries dying without issue before the time for distribution. It cannot affect the matter now.

I assume that all the facts are admitted that would entitle the trustees to deal with the estate and divide it, when they made the conveyance upon which plaintiff's title rests.

I think plaintiff entitled to the usual judgment for specific performance, and if there are any further questions as to the title needing investigation, let the usual reference be made in respect thereof, but with the declaration that plain-