

feasible interest in the legacy: see per Lord Langdale, M.R., in 4 Beav. at p. 116, and compare what is said by the same learned Judge in *Curtis v. Lukin*, 5 Beav. 155. And this is because the legacy is actually given to the legatee, and the direction as to payment is merely directory as to the management of the gift: see per Shadwell, V.-C., in *Josselyn v. Josselyn*, 9 Sim. at p. 66. It will be seen that the rule in *Saunders v. Vautier* flows from the doctrine of vesting of legacies.

I do not stop to inquire as to the difference in the rules governing the vesting of legacies of personalty, based as they are on the common law, and ultimately on the civil law—or as to the rules governing the vesting of a devise of land, or of legacies payable out of the proceeds of land, based upon the common law. The difference in these rules is just part of the difference of the law of personal property and the law of real property, due to the claims of the Church in the early history of England, “which has had the effect of splitting our English law of property into two halves” . . . : Pollock and Maitland, *History of English Law before the Time of Edward I.*, vol. 1, pp. 107, 108.

The question whether the same rules as to vesting apply in the case of a deed as in the case of a will has received some attention in the Courts of England and Ireland. . . .

[Reference to *Hubert v. Parsons*, 2 Ves. Sr. 261, 263.]

This case is mainly of importance in deciding that the rules which govern vesting in cases under a will are not applicable in cases under a deed. . . .

[Reference to and quotations from *Burges v. Mawby*, 10 Ves. 319; *Campbell v. Prescott*, 15 Ves. 500; *Stephens v. Frost*, 2 Y. & C. Ex. 297, 309; *In re Orme* (1851), 1 Ir. Ch. R. 175; *Mostyn v. Brunton* (1866), 17 Ir. Ch. R. 153, 158, 161; *Howard's Trusts* (1858), 7 Ir. Ch. R. 344.]

I have referred thus at length to these cases in order to discover, if possible, whether the same rules as to vesting apply to the case of an instrument which derives its force from the common law, such as a deed, as in an instrument which ultimately depends upon the ecclesiastical law, as a will. It will be seen that the Courts have laid down diametrically opposite rules, and the question is far from being free from difficulty.

But in the particular case in hand we have a decision in our own Courts.