

have died there would be no right in the executors to retain any part of it.

I can find in the decree no warrant for the executors excluding any of the daughters of the testator, or his son George Sandfield, from sharing in any pro rata allotment made by them, and it appears to me that, had it been intended that only those of them who were living at the time an allotment was made should share, something to indicate that would be found in the decree; instead of that the decree provides that every allotment is to be made to the plaintiffs and Lilla Macdonald in pro rata shares.

What justification in the face of this provision would the executors have, in making an allotment under the will, for excluding Lilla Macdonald or those who represent her from a pro rata share of what they have decided to allot? I can find none.

The ratio decidendi in *Leeming v. Sherratt*, 2 Hare 14, seems to me to be applicable. In that case the testator gave his freehold and the residue of his personal property to trustees upon trust to sell the freehold and get in the personal property, and to pay and divide the money arising therefrom so soon as his youngest child should attain the age of twenty-one years unto and equally among his children, and in case of the death of any of the children leaving issue, such issue were to take the share which the parent so dying would have been entitled to have, and it was held that a child who attained his majority, but died before the youngest attained twenty-one, was nevertheless entitled to a share of the fund. The Vice-Chancellor said the trustees are trustees of the residue for all the testator's children upon the happening of an event which in fact has happened, namely the youngest child attaining twenty-one, and he added that if there was any case which decided as an abstract proposition that a gift of a residue to a testator's children upon an event which afterwards happened did not confer upon those children an interest transmissible to their representatives, merely because they died before the event happened, he was satisfied that case must be at variance with other authorities.

In the case at bar there is no gift of the residue except in the direction to allot, just as in *Leeming v. Sherratt* there was no gift except in the direction to pay and divide. In that case there was but one period fixed for the payment and division, while in the case at bar periodical allotments are directed, but that difference between the two cases cannot affect the application of the principle which the Vice-Chancellor applied. Though periodical allotments are directed, as I have pointed out, the direction to make them must eventually exhaust the whole of