

MIDDLETON, J.:—At the time of the death of the testatrix in March, 1904, she owned a certain parcel of land charged with an annuity in favour of her brother John. She directed her executors to sell this land as soon after her death as convenient, should she survive John: if she predeceased her said brother, then as soon after his death as convenient. The executors were out of the proceeds of the sale to pay certain legacies, *inter alia*, \$200 to Dick Lister, \$100 to William Bowley.

The brother died on the 7th December, 1911. Lister survived the testatrix, and died on the 31st May, 1904. Bowley also survived her, and died on the 1st September, 1909. The question is, do these legacies lapse?

Jarman, 6th ed., 1904, thus states the law: "But even though there be no other gift than in the direction to pay or distribute in futuro, yet if such payment or distribution appear to be postponed for the convenience of the fund or property, vesting will not be deferred until the period in question."

This rule has on numerous occasions received judicial sanction. It is, however, contended that the case is governed by *Bolton v. Bailey*, 26 Grant 361. The will, though similar to the will in question here, is different: as there the wording is "After the sale of my said real estate I give" etc.

I do not think that the learned Vice-Chancellor intended to lay down any new exception to the well-established rules relating to the vesting of legacies. I think that, properly looked at, the case depended upon the particular words used, and that in his view there was no gift until after the sale had taken place.

Here the postponement of payment was clearly for the convenience of the fund; and, to quote again from Jarman (p. 1405) the words used "do not postpone the vesting of the gift to the posterior legatee until the death of 'A,' but merely shew that that is the period at which it will take effect in possession." This statement is based on *Benyon v. Maddison*, 2 Bro. C.C. 75—a decision of Lord Kenyon's—where the testator gave all the income to his mother for life, and after her decease "I then give to 'A'" etc. The Master of the Rolls there thought that to multiply decisions of the kind suggested "seems reproachful to the law."

The amount of the legacies may be paid into Court, and the executors may be discharged. As the amounts are so small, upon an affidavit being filed that the legatees left no creditors the money may be distributed among those now beneficially entitled.

Costs will be out of the estate.