condition on the happening of which only the bequests provided for by the second clause of the will were to arise, I think they fail because that event did not happen. On the contrary, the testator survived his wife for the time I have mentioned, and, if that be material, was for the greater part of the period in such a condition as to be capable of making another will.

It is, however, suggested—though the point was not taken below—that, reading the first and second clauses of the will together, the latter should be considered as meaning "in case my wife does not survive me," and that the testator meant by the language he has employed in the two clauses, to provide simply for the two events, that of his wife surviving him and that of her not surviving him. With all respect, I think that to adopt this construction would be to take an inadmissible liberty with the (to me) plain words of the instrument. To paraphrase it in this manner would be to make a will for the testator, and to provide for an event which, for anything we can know, he may have anticipated, reserving his intention to make a different disposition of his property if it should occur. What the testator tells us is practically this: "If my wife survives me, I give her all. If we should die at the same time by accident or otherwise—in which event she will of course take nothing and I shall have no opportunity of making another will—I provide for that event by the following dispositions. There is a third contingency—that of my surviving her—but, if that occurs, it will be time enough for me to consider what testamentary disposition I shall then make of my property."

To read the second clause as merely saying "in case my wife does not survive me," would be to include the two contingencies (1) of the testator and his wife both dying at the same time, which is what is expressly provided for, and (2) of her pre-deceasing him, which is not.

The language of the clause, I repeat, is to me too plain to warrant us in holding that the true contingency guarded or provided against, was the mere non-survival of the wife, and I, therefore, cannot treat the case as being ruled by such authorities as Davies v. Davies, 47 L. T. N. S. 40, and others of that class.

ARMOUR, C.J.O., and MOSS, J.A., gave written reasons for coming to the same conclusion.

MACLENNAN, J.A. (after referring to the terms of the will and the circumstances):—The testator is making his will