lapse of nearly forty years, and the executors are given an uncontrolled discretion as to realisation. The cases shew, I think, that the testator cannot have meant to leave the estate in such a situation as to make the interest of his children dependent upon the accident of the date of realisation; to make it "a race between the lives of the legatees" and realisation. See cases in Jarman, 5th ed., p. 796.

I am not certain that, in view of the judgment of 1875, this question is now open; it may mean that the interest of the children is vested; but as, in this respect at any rate, I agree in the result, it is not necessary to discuss this question.

The questions submitted will, therefore, be answered by declaring:—

(1) That the representatives of the testator's daughter Lilla were, according to the construction of the will, entitled to share in the distribution made by the executors subsequent to her death.

(2) That the capital invested to produce the annuity payable to the widow, upon her death fell into the residue and became divisible under the 8th clause among the testator's daughters and son George.

Costs out of the estate.

DIVISIONAL COURT. JANUARY 18TH, 1911.

RE GRAHAM.

Will—Construction—Trust—Absolute Interest—Vested Estate to be in Part Divested in the Event of Marriage.

Appeal by Mary Ann Graham from the order of FALCONBRIDGE, C.J.K.B., ante 329.

The appeal was heard by BOYD, C., LATCHFORD and MIDDLETON, JJ.

F. Denton, K.C., for Mary Ann Graham.

B. N. Davis, for George Henry Graham.

S. W. Field, for the executor Timothy Barber.

The judgment of the Court was delivered by BOYD, C.:—The will is to be construed according to its words, unless some rule of legal construction interferes. Here there is no need to frustrate the intentions of the testator. I have looked at the cases, but all are distinguishable: e.g., In re Jones, [1898] 1 Ch. 438, gave the