The claim of the rest of kin and heirs might be put aside without discussion, as it was clear that there was no intestacy.

The learned Judge had, after much consideration, come to the conclusion that Charles was entitled to the $1,200. If the gift to him was vested and not conditional, there could be no doubt as to his right.

The case was not one in which there was a mere executory devise to one on his attaining the given age, with no disposition of the freehold in the meantime. Here there was an immediate devise of the freehold to the trustees, who were to hold it for the grandson on his attaining 25.

Where there is an executory devise, and no provision has been made with respect to the property in the meantime, the heir will take unless he is cut out by a residuary devise; but this rule has never extended to personal estate: see Bective v. Hodgson (1864), 10 H.L.C. 656, 664, 665.

Where, as here, there is an immediate devise of the freehold to trustees, the rule does not operate, for the reason for it does not exist. The freehold is not in abeyance, but is vested in the trustees, and the heir is excluded by the very terms of the devise. The rule as to the income from personal estate is well-settled and is founded upon the view which the Court has always entertained as to the intention of the testator. This intention has to give way to the rule of law referred to, when the case is one of an executory devise of land, but this exception is not to be extended so as to defeat the wish of the testator in any case not falling within the letter of this rule of law.

When once the beneficiary complies with the condition of the gift, the whole subject of the trust—the accumulated income as well as the corpus—is his.

Against this view was cited a passage from Theobald on Wills, 6th ed., p. 178: "A future devise of lands, whether residuary or not, and whether the fee is vested in trustees or is in abeyance, does not carry the intermediate rents and profits." The learned Judge said that he could not accept the words indicating that this rule applies where the fee is vested in trustees, if the writer intends to cover a case such as this. The words "a future devise of lands" probably were intended to dominate the whole clause, and it was not intended to apply to a present gifts of lands to trustees, where there is a future beneficial interest.

The following cases were referred to and distinguished: Duffield v. Duffield (1829), 3 Bligh N.S. 260; Perceval v. Perceval (1870), L.R. 9 Eq. 386; In re Eddels' Trusts (1871), L.R. 11 Eq. 559.

The alternative aspect should not be ignored. The absence of a gift over pointed to the intention of a gift to the grandson