The testator had no children. He was very fond of his so-called adopted daughter. He provided for her education, and expressed a wish that she should continue to reside and make her home with the widow. It may therefore well be that the testator intended to give the adopted daughter one-half on the division.

A reference was given to me by Mr. Simpson to the case of Re Davies (1913), 4 O.W.N. 1013. That is a case in which my brother Middleton came to a different conclusion from mine. In that case a trust fund was created from which the income was to be paid to the wife until the youngest child attained the age of 21 or married. Then a trust fund was to be created for certain purposes, and, when that fund was sufficient for the purposes named, the surplus was to be divided between the widow and the daughters, "share and share alike." The widow's contention was that she took half and the daughters took the other half. The learned Judge held against the widow's claim.

The distinction between that case and the present is, that in the Davies will were the words "share and share alike." These words were held to limit the share of the widow to the amount of any one of the daughters. The words "share and share alike" are not, nor are any equivalent words, in the clauses of the will now being considered.

My answer to the first question is, that the adopted daughter took one half, and the children of the sisters Mary Williams and Betsy James took the other half; these children taking equal shares of the one half, per capita.

(2) In answer to the second question, I am of opinion that the bequest vested upon the death of the testator. It was the intention of the testator to deal finally with his property; there was no clause devising residue. Payment over was postponed until the death or marriage of his widow, but provision was made for the complete care of and dealing with his whole estate until the time for distribution should arrive.

(3) As the time of vesting was the death of the testator, and as the adopted daughter, Mary Ann Piper, survived the testator, the gift to her did not lapse.

(4) The bequests to the children of Mary Williams and Betsy James, who died after the death of the testator but before the widow, not leaving children, did not lapse, nor did these bequests lapse in the case of leaving children, but the said children would take the share the parents would have taken if he or she had survived the widow.

The petitioners ask generally what is the proper course to