

effectively only by making the gift or legacy entirely dependent on the discretion of the trustee, or by means of a gift over to some other beneficiary. The matter was discussed as if it were a new point by Stirling, J., in *Re Johnston*, [1894] 3 Ch. 304; a decision followed in *Re Rispin*, 25 O.L.R. at p. 636, which was affirmed in the Supreme Court.

But the foundation of the rule is of older standing. The Court of Chancery has always leant against the postponement of vesting in possession, or the imposition of restrictions on an absolute vested interest (per Lord Davey in *Wharton v. Masterman*, [1895] A.C. at p. 198, and in the same case at p. 192, Lord Herschell deals thus with the doctrine: "That it was regarded by the Courts as a necessary consequence of the conclusion that a gift had vested, that the enjoyment of it must be immediate on the beneficiary becoming *sui juris*, and could not be postponed till a later day unless the testator had made some other destination of the income during the intermediate period."

The next point discussed was whether the married daughter was entitled to receive her full share, irrespective of the provision that "the money inherited" from her father should be "settled upon herself," etc. This later discretion, if it conflicts with the earlier one, must prevail according to the usual rule. It perhaps does not so much conflict as deal with this testament of his bounty in another point of view; i.e., the element of marriage is introduced, and the desire is expressed to protect the wife from the control or influence of the husband. And what is arrived at is a partial restriction on the enjoyment of the legacy so that it shall not "be encroached upon," i.e., alienated or anticipated during coverture. In this view this clause may well stand with and modify the other. That is to say, both yield this meaning: this money representing the share of the estate is to be given to her as her own absolutely, provided only that during coverture she shall enjoy it to her separate use (i.e. settled upon herself), and so that it shall not be encroached upon by her or her husband during coverture. After coverture, the restriction ends and she has it as if unmarried.

The restraint is annexed to the separate estate only, and the separate estate has its existence only during coverture: Lord Langdale in *Tullett v. Armstrong*, 1 Beav. 1, and 4 M. & Cr. 377. The words of the will are satisfied if the restraint is limited to the contemplated coverture which is now actually existing, and it may well end therewith: so that when discovered, she may dispose of the corpus as she pleases.

Of the cases cited for the daughter, *Re Hutchinson*, 59 L.T.