husbands of them or either of them. And likewise to pay over to them or the survivor free from such control, debts and liabilities as aforesaid, all the aforesaid interest and dividends equally, or in case of death, all to the survivor. Provided, in the event of the said B. E. K. and T. C. K. dying, leaving children, then, and in such case upon trust, to transfer and assign the said securities unto such children or child, as the case may be, in such manner that such children or child shall and may stand in the place of, and receive the share, proportion and interest of and in the premises of his, her or their respective deceased parent, or of the survivor, as the case may be." T. C. K. died in February, 1892, and E. K. died in September, 1882. T. C. K. was younger than B. E. K.; B. E. K. was 21 in 1896, and married H. H. S. After making the trust deed the settlor died, having made a will.

Held, that the income during infancy of B. E. S. went to the executrix of E. K.: *Laxton* v. *Eedle*, 19 Beav. 321; and that on B. E. S. attaining age of 21 years she became entitled to the corpus absolutely: *Home* v. *Pillans*, 2 M. & K. 15, *Clarke* v. *Henry*, L. R. 11 Eq. 221, 6 Ch. 588; *In re Dowling's trusts*, 14 Eq. 463.

W. B. A. Ritchie, Q.C., for trustees. *C. S. Harrington*, Q.C., for residuary legatees under will. *R. E. Harris*, Q.C., *C. H. Cahan* and *H. McInnes*, for B. E. S. *H. B. Stairs*, representing unborn children of B. E. S.

Townshend, J., in Chambers.] IN RE SCOTNEY. [March 15.

Will—Construction of—Condition precedent—Vested legacy.

Testator died in 1890; by his will he directed his executors to convert estate into money and hold it invested during lifetime of testator's wife, and at her death to divide same equally amongst certain named of his children, of whom Frederick was one, and one S. S., his grandson. Then followed a provision as follows: "The legacy to my son Frederick is upon condition that he transfers to my executors the property which I conveyed to him in 1870," and "the legacy to my grandson S. S. is upon the condition that he lives to the age of twenty-five years, and if he be not of that age at the death of my wife, my executors shall retain his share until he arrives at such age and then pay the same over to him. . . . That in the event of the condition annexed to the devise to my son Frederick and my grandson S. S. not being fulfilled or performed, I direct my executors to divide the share or shares of those in default amongst the other named devisees."

Frederick, in 1891, was requested by the executors to make the conveyance, but neglected to do so. He died unmarried and intestate in Jan., 1897. Testator's widow died in Nov., 1897. The grandson S. S., though alive, reached the age of twenty-three only. After the death of Frederick, at request of the executors, the heirs of Frederick Scotney conveyed his lands to the executors.

Held, that the legacy to Frederick was made upon a condition precedent which he was bound to perform, and the gift over to the other devisees took effect as he did not do so, and the conveyance after his death did not fulfil the condition to enable the parties to take as heirs at law.