testator's beneficence. He survived the testatrix, and died at the Home for Incurables in the city of London, on the 22nd June, 1913. At the time of his death, he had $501.85 in cash, and there was a balance due upon an agreement for sale of the houses, amounting to $1,911.35. The three Oxford Park lots also remained; they are valued at $200. This makes a total of $2,613.20; all of which originated, it is admitted, from the sister's estate.

The question is, whether the gift over to the nephew and niece can take effect. This question resolves itself into a determination whether there can be found in the will anything to cut down the absolute gift to the brother.

In the much discussed case of Constable v. Bull, 3 DeG. & Sm. 411, it was held that the words there found, perhaps not very widely different from the words here used, cut down the gift to a life estate. In the Irish case of In re Walker, [1898] 1 I.R. 5, the true principle is well explained. The choice is between an absolute gife and a life estate. There does not seem to be any middle ground. If the beneficiary has the right to deal with the corpus, then the gift of any balance that may remain is repugnant and void, for the property is vested in the first taker absolutely, and the attempt to give what remains at the death of that first taker is an attempt to do something not permitted by law.

The same result is arrived at in In re Jones, [1898] 1 Ch. 438. There a testator gave absolutely to the widow, and what remained at her death, over. It was held that this failed.

It is probably impossible to reconcile all the cases satisfactorily; but the tendency of all the later cases is against the attempt to cut down an absolute estate to a life estate, unless the testator's intention is clear beyond peradventure.

The order will, therefore, declare that the property vested in William B. Chase absolutely, and that the attempted gift over fails to take effect.