

BOYD, C.

SEPTEMBER 23RD, 1915.

RE JACKSON.

*Will—Construction—Bequest—Condition—"If Living"—Times
Appointed for Payment.*

Motion by the executors of George Jackson, deceased, upon originating notice, for an order determining a question arising upon the will of the deceased.

The motion was heard at the London Weekly Court.

J. B. McKillop, for the applicants.

A. M. Harley, for the Trusts and Guarantee Company, Limited, administrator of the estate of Mary Etta K. Milburn, deceased.

THE CHANCELLOR said that the testator (a widower) by will executed on the 12th September, 1913, divided his substance between two sons and two daughters, giving this direction: "Within two months after my death my sons to pay \$500 to Miss Etta Milburn, also my daughters to pay to her in three months after my death \$500." He was engaged to be married to this lady, and in the last sentence of the will he writes thus: "P.S. The money left to Miss Milburn is intended for her alone and if not living to go back and be divided between my children equally."

The "P.S." might have been a mistake for N.B.; but it gave the key to the testator's intention in benefiting Miss Milburn. The testator died on the 12th December, 1913, and Miss Milburn died on the 7th March, 1914, i.e., more than two months and less than three months after his death. The first \$500 was not paid to her by the sons (who were also executors), though she was clearly entitled to receive it. But the question was as to both sums, the executors saying that the effect of the will was to give her only a life estate, which ended with her death, and her representatives claiming an absolute gift, not affected by later words which (they said) were to be treated as repugnant and unlawfully restrictive. It seemed a waste of research to cite cases on other testamentary words to give colour to the ordinary language used by this testator.

He appeared to regard the two sums of \$500 as designated out of his general estate for the use of his affianced personally, payment to be made to her of one sum in two months and the other in three months after his death, if she was living at the time appointed for payment: if not, the money was to "go back" and be