

her husband as provided in the fifth paragraph of the marriage contract of the testatrix; i.e., in trust for the daughter for her life without power of alienation and with power of appointment by will among the issue of her marriage, and with appropriate provisions in the event of death without issue or without exercising the power of appointment.

The testatrix next provides that if either of the sons die under the age of twenty-five years or either of her daughters die under the age of twenty-five years, without having been married, the share of the one who died shall vest in the survivor. The income from the presumptive share of each child is, pending the vesting, to be applied by the trustees for the benefit of the child—"and shall be from time to time paid to the guardian herein appointed of each of my children for and toward his or her maintenance, education, and support in their accustomed manner and style of living, until such share of each of my said children shall be vested," and she nominates and appoints her husband Charles A. Eliot guardian of the children.

The questions raised upon this motion are:—

1. Are the trustees justified in paying the whole income to the father; (a) during minority; (b) after majority, pending the vesting of the estate?

2. Is the father entitled to retain so much of the income of the children as may not be necessary for their due maintenance and to invest the same for their benefit?

3. Is the share of each child vested on attaining majority or on attaining the age of twenty-five years?

4. When a daughter attains twenty-five is her share absolutely vested or has she merely a life interest and a power of appointment by will among her issue; in other words, does the provision requiring the trustees to settle the share of the daughter offend against the rule with respect to perpetuities?

5. Does the will of the testatrix itself offend against the rule as to perpetuities in postponing the period of vesting until children respectively attain the age of twenty-five years?

I have set forth the questions in the form in which they were presented by counsel upon the argument rather than in the form indicated by the notice of motion.

Dealing first with the question as to the position of the father. The mother purports to appoint him guardian of the children. It is clear she had no power so to do. The