

then, upon trust, I give and devise the said lot, with dwelling-house, etc., unto my son, Walter Evans, aged five years, to be enjoyed by him at the age of 21 years, if my said wife shall then be deceased, but if she shall not, then the same to be enjoyed by him when and so soon after he shall have attained the age of 21 years as my said wife shall die; and I hereby direct my trustees and the survivor of them, and his heirs, to release, convey, and assure the same unto my said son Walter Evans, his heirs and assigns, at the time of the death of my said wife; provided that he, my said son Walter, shall then have attained the age of 21 years; but if shall not have attained that age, I direct my said trustees to so release, convey, and assure the said lot to my said son when and so soon as he shall attain the age of 21 years. . . . If any of my other sons "referring to the testator's sons, except David, should die before the time appointed for him or them to receive his or their share or shares, I direct that his or their share or shares shall be equally divided amongst his remaining brothers, except my son David, who is not to receive in any event the share or shares of any of my said sons who may die before receiving his or their share or shares." The Chief Justice held that the testator meant that Walter should take lot 2 only in the double event of his attaining the age of 21 years and surviving the testator's widow, Betsy.

H. T. Beck, for plaintiff.

J. W. McCullough, for the defendant D. Evans jun., in same interest as plaintiff.

A. H. Marsh, K.C., for other defendants.

The Court was composed of BOYD, C., and FERGUSON, J., both of whom wrote opinions, agreeing in the result.

FERGUSON, J.—The testator fixed a point of time at which his son Walter was to receive a title to the land in question, which was the earliest point of time after he, Walter, should have attained 21 years, and the life tenant, the widow, should be dead. Walter did not survive the widow, and he, therefore, died before the time appointed to receive his share, and the gift in the subsequent clause sprang up upon the death of Walter of its inherent strength, and he had not, and the plaintiff cannot through him have, any vested rights to the land. Judgment below affirmed with costs.