tors and assigns forever. The will then proceeded as follows: "And my will is further that in case there should be any child or children of my deceased brother Maurice living at the time of the decease of my said wife, then that said child or children should receive out of the proceeds of my said property at her decease £3,000."

Held, that this was not a vested interest, but contingent upon the plaintiff, a child of Maurice, being alive at the decease of the widow, and that plaintiff had no present right which would enable him to institute a suit during the widow's life, to have a portion of the estate set aside to secure the legacy. *Duggan* v. *Duggan*, 22/20.

On appeal to the Supreme Court of Canada—

Held, reversing the judgment of the court below, that plaintiff had more than a possibility or expectation of a future interest; he had an existing contingent interest in the estate and was entitled to have the estate preserved that the legacy might be paid in case of the happening of the contingency on which it depended. *Duggan* v. *Duggan*, 17 S. C. C. 343.

41. Construction—*Vested estate—Married Women's Property Act — Husband of lunatic—Right as to wife's share.*]—J. devised his real and personal estate to his executors to sell, invest the proceeds, and pay the income in equal half-yearly instalments to his four children. On the death of either of said four children the executors were directed to pay over the share of such child "to such person or persons as he or she shall by his or her last will and testament duly executed, direct and appoint." E. M., one of the children, after her marriage, became insane and incapable of making a will. A certificate as to the insanity was granted by the Commissioner of Lunacy in England, where she and her husband resided.

Held, that the interest of E. M. in the estate was vested and would not revert to the estate in case of her dying without appointment;

Also, that it was not subject to the Married Women's Property Act of this province;

Also, that M., the husband of E. M., was entitled to receive and reduce into possession his wife's share, subject to a settlement. *Dwyer* v. *Mapother*, 26/294.

42. Contingency — *Intention — Condition — Context — Codicil.*] — Testator devised certain lots of land and stores equally between his two sons J. S. and T. G. with a proviso that in the event of T. G. dying unmarried, or without leaving issue, then his interest in the lots and stores should go to and be the property of J. S. or his children. By a codicil to his will testator devised to his son R., provided he returned to New Glasgow to live, an equal interest with J. S. and T. G. in the lots and stores.

R. died in the United States, shortly after the death of testator, and without having returned to New Glasgow to live.

T. G. married after the death of the testator but had no children.

In an action by plaintiff, T. G., for a declaration of his interest under the will,

Held, that the will and codicil must be read together, and that, so read, an intention was shown on the part of testator that each of his three sons was, in some circumstances, to have an absolute indefeasible estate, and that to give effect to this intention the event of the death of T. G. must be restricted to the lifetime of the testator.

Per Graham E. J., that in disposing of such property as lots and stores the testator must have intended equality of interest and not an equal portion of the area of the premises. *Fraser* v. *Fraser*, 28/172.

On appeal to the Supreme Court of Canada.

Held, allowing the appeal and restoring the judgment of Townshend J., reversed in the Supreme Court of Nova Scotia, that the codicil did not affect the construction to be put on the devise in the will; that J. S. and T. G., took as tenants in common in equal moieties, the estate of J. S. being absolute and that of T. G. subject to an executory devise over in case of death at any time and not merely during the lifetime of the testator. *Cowan* v. *Allen*, 26 S. C. C. 292, followed.

Held, also, that the word "equal" indicated the respective shares which the two devisees were to take in the area of the property devised and not the character of the estates given in those shares. *Fraser* v. *Fraser*, 26 S. C. C. 317.

43. Residuary bequest—*Vested and contingent interests—Repugnant provision.*]—As to the rest and residue of his estate (including lapsed legacies), testator directed his executors and trustees to hold the same, and to keep it invested in safe securities, until his youngest surviving child should attain the full age of twenty-one years, and, thereupon, to divide such residue and its accumulations and unapplied income, if any, share and share alike, among those of his children named, and the issue of any one or more of said children who should have died before such division or distribution was actually made.

Held, that there was an immediate gift to the children named, but that the time for distribution was postponed until the youngest surviving child attained the full age of twenty-one years.

Held, that the share of testator's daughter B., in the residue, on her death, unmarried and without leaving issue, vested in the executors, and that it did not, on her death, vest in the other residuary legatees.

Held, also, that a bequest to testator's son J., in similar terms to the bequest to A., was not divested by the death of J. under the age of twenty-one. That the legacy having vested, and the testator having merely given directions as to the expenditure of the interest during the minority of J., the legal representative of J. was now entitled to receive payment from the executors. *Butler* v. *Butler*, 29/145.

44. Bequest — *Direction postponing payment—Repugnancy.*]—Testator devised to his executors and trustees the sum of $20,000 to be invested in good securities and the income applied for the sole use and benefit of his son A., until he should have arrived at the age of twenty-eight years, at which time said sum, and its accumulations, and unapplied income, if any, or the securities representing the same, were to be paid over, but enabling A. to make a will disposing of the fund when he became twenty-one years of age.

Held, that A. took a present vested interest in the legacy bequeathed to him, and that the direction postponing payment until he attained the age of twenty-eight years was repugnant and void. *Butler* v. *Butler*, 29/145.

45. Words "family," "survivors."] — Testator devised the residue of his property,