

operates to change the beneficiary so as to make the fund distributable as the estate of the deceased is by the terms of his will to be divided.

There will, therefore, be a declaration that the policy does not pass and is not affected by the will, and the costs of the executors, which I fix at \$20, and of the widow, will be paid out of the fund.

MIDDLETON, J., IN CHAMBERS.

AUGUST 19TH, 1910.

RE CARR.

Will—Construction—Gift of Residue to Son on Attaining Twenty-five—Gift over in Event of Death before that Date—Gift of Income — Vested Estate Subject to be Divested — Infant—Allowance for Maintenance Made by Will—Increase of.

Motion by Homer Carr, an infant, and Catherine Carr, his mother, for the opinion, advice, and direction of the Court as to the construction of the will of the late Alexander C. Carr, the father of Homer and the husband of Catherine, and as to whether Homer Carr took under the will a vested estate in the property given to him; and also a motion by Catherine Carr for a larger allowance for the support and maintenance of Homer Carr.

W. C. Chisholm, K.C., for the applicants.

J. A. Paterson, K.C., for unborn children.

J. A. Macintosh, for the executors.

E. C. Cattanach, for the Official Guardian.

MIDDLETON, J.:—It is clear that the devise of real estate to one "when he shall attain the age of twenty-five years," without more, is contingent upon the devisee attaining that age. The words of contingency are in the gift itself, and, unless controlled by other portions of the will, must prevail: *In re Francis*, [1905] 2 Ch. 295. The same principles apply to a bequest of personalty.

It is equally clear that the context may shew that the testator used words which, standing alone, would import a future vesting and contingency, as indicating merely a future enjoyment of property immediately vested.

The wording of the will in question is peculiar and requires careful consideration. The material clauses are as follows:—