receiving; and to pay for the education, maintenance, and ordinary requirements of his son George, and then proceeded: "And I direct my trustees in their discretion, if they find my son George deserving of the same, to make such annual allowance to him as to them may seem warranted by the proceeds of the income of my estate, and if my said trustees are satisfied as to his steadiness they are to treat my said son George in respect to the said allowance in the same manner as my said daughters, Josephine and Louise. . . . It is my will that in the case of each of my said daughters the capital sum necessary to produce the allowance made to her be paid after her death to such person or persons as she may by will direct."

Held, that George was only entitled to his maintenance and education during minority, for there was nothing in the will to indicate an intention to extend the trust for maintenance and education beyond that period.

Held, also, that George was not entitled to any annual allowance in addition to his maintenance and education during his minority, though the amount which might be paid him after attaining majority, as an annual allowance, was unlimited, resting on what the trustees in their discretion might deem warranted by the estate. For by treating George the same as Josephine and Louise the testator referred only to the mode of payment, and the power of disposing of the principal, not to the amount of the allowance.

It could scarcely be imagined that the testator conceived it probable or possible that the trustees could, upon inspection, satisfy themselves of the steadiness of a boy of twelve years old (George's age at the death of the testator). Time must elapse before such a conviction could be attained, before the character could be formed and a reasonable degree of certainty as to its stability reached, and it is not straining language to infer that this undefined time should cover the whole period of minority.

J. Bethune, Q.C., for the plaintiff.

N. W. Hoyles, for the trustees.

C. Robinson, Q.C., and *Lefroy*, for the defendants, other than the trustees.

Ferguson, J.] [Jan. 28.

MCLACHLAN V. USBORNE—MCGEE V. USBORNE.

Will—Power to appoint new trustees—Payment to persons no longer trustees—Husbands as trustees—40 Vict. c. 8, s. 30—R. S. O. 107, s. 30.

A testator, by will dated June 27th, 1871, devised certain properties to H. F. M., J. H. M., and D. M., their heirs and assigns, as tenants in common, and charged the same with $100,000 (which he designated the trust premises), to be paid by them to C. M. and to his daughters, H. R., and J. M., share and share alike, through their mother, M. M., his wife, as trustee, as therein mentioned; and after sundry provisions, he directed that at the death of his wife, M. M., the said "trust premises" should be held by the said H. F. M., J. H. M., and D. M. and their survivors on the trusts of his will, "unless my said wife shall have previously appointed, by will or otherwise, any other person or persons to be a trustee in her place, which I hereby authorize and give her power to do."

To secure the amount payable to M. M. as trustee, as aforesaid, the plaintiff, who then represented the whole of the devised estate, gave a mortgage, dated Oct. 6th, 1877, and also, at the same time, secured to her a certain mortgage made by one McG.

On Nov. 5th, 1873, M. M., by indenture reciting the will, professed to nominate and appoint L. R. and J. U. to be trustees in her place under the will, and granted them the trust moneys and property.

Afterwards by deed poll of Oct. 6th, 1877, M. M. again appointed L. R. and J. U. to be trustees in her place, and assigned them the mortgage of that date given to her by the plaintiff.

By two payments, one on Oct. 6th, 1877, and one on May 25th, 1881, $66,666 was paid to M. M. by the plaintiffs, they contending she was trustee under the will, notwithstanding any alleged appointment by her of L. R. and J. U. M. M. paid over to L. R. and J. U. the amount of the first of these payments, but not of the second.

The plaintiffs now claimed that they had discharged the whole of the mortgage money due under their mortgage to M. M. of Oct. 6th,