abatement, but that in the event of a surplus, "the same shall be divided equally between each." There was a residue.

Held, that the stated valuations were not intended to be the basis for abatement, and that Margaret and her daughter were entitled to participate in the surplus, the devisees and legatees taking share and share alike. (Thompson J.) *Patterson* v. *Hueston*, 40/4.

34. Insurance policy — *Delivering to trustee—Effect of.*]—A testator directed a certain investment after the death of his son —" to be appropriated for the benefit of his wife and child or children."

Held, that it being a gift that was not immediate, a second wife and also all the children coming into existence before the period of distribution were entitled to share in the bequest, as well as the children living at testator's death.

A testator, having a policy of life insurance which was made payable to his executors, subsequently executed a declaration indorsed on the policy, which stated that all advantages to arise from said policy should accrue for the benefit of all his children, the policy to be held in trust for said children, who were to share equally. The children of the first wife claimed the whole fund, to the exclusion of the children of the second wife.

Held, that such a gift was, in effect, immediate, the right to the fruits of the policy vesting in the trustee at the moment of its delivery to him in trust, and the gift, being then complete, both as to the settlor and the children of the settlor then in existence, vested in such children exclusively. (Meagher J.) *Starr* v. *Merkel*, 40/23.

35. Trust — *Beneficiaries — Words "my heirs at law."*]—Testator bequeathed the sum of £10,000 to trustees in trust to pay the income thereof to his wife for life, on her death to his only son for life, and on his death, without issue, to pay one-third of said sum of £10,000 to his heirs-at-law. The son survived the widow and disposed of his estate by will. Plaintiffs, nephews of testator, claimed as heirs-at-law of testator.

Held, that the expression "my heirs-at-law" must be construed to mean the heirs-at-law of testator at the time of his death, and consequently the gift over of one-third of the corpus passed under the will of the son.

Held, also, that where a legatee makes an unsuccessful claim, and the case involves difficulty owing to conflicting decisions or the acts of testator, or if the legatee has a fair ground of making the claim, each party bears his own costs. (Graham E.J.) *Jost* v. *McNutt*, 40/41.

36. Construction — *Devise to wife — Absolute gift.*]—Where a testator by his will said: "I . . . do give and bequeath unto my wife, Sarah A. McN—ll, all the property which I possess at my death, to dispose of to the best advantage for the support of the family and to leave the residue as she sees fit and proper at her death."

Held, that no trust for the family was created, and that the wife took absolutely. (Meagher J.) *Sinclair* v. *Malay et al.*, 40/181.

37. Fund—*Division of—Parties entitled.*]—If a fund is given to be divided into as many shares as there are children of S. who survive S., one share to be paid to each child for life, and on his death to his children, the children of those children of S. who were born in the testator's lifetime will take the share in which their parent had a life interest, while the children of such children of S. as were not born until after the testator's death, will take nothing. (Graham E.J.) *McDonald* v. *Jones*, 40/232.

38. Distribution of fund—*Intention of testator — Distinct contingencies.*]—Where it appeared from testator's will, in relation to the distribution of a certain fund among his children and their offspring, that he had in mind two distinct contingencies, in one of which he provided for the distribution of the fund in one way, and in the other in a different way.

Held, that it made no difference whether a reason could be discovered for the distinction made by testator between the two cases, the duty of the court being merely to interpret the will and not to make a new one.

The cases provided for being mutually exclusive, and the event that happened being that provided for by testator in the earlier clause of his will.

Held, that the fund must be disposed of as in that clause provided. *McDonald* v. *Jones*, 41/536.

VI. (F) Vested or Contingent Estates and Interests.

39. Construction—*Vested and contingent interests.*]—Testator died in 1875, leaving his widow and two daughters, M. and E., him surviving. The daughter E. died in April, 1887, leaving issue. The widow died in May of the same year. The daughter M. survived. By his will testator devised all his real and personal property to his executors upon trust, to "permit my dearly beloved wife, so long as she shall continue my widow, to occupy the whole of my homestead farm and the appurtenances thereof," and willed and directed "that on the death or marriage of my beloved wife my executors shall convey to my said daughter E., her heirs and assigns, all and the whole of my homestead farm with all the appurtenances thereof." By another provision of the will the executors were directed to invest the sum of $1,000 and to apply the interest towards the support of his daughter E. during her lifetime, with power to use a portion of the principal sum annually in case the interest should not be sufficient for the purpose. In case of the death of his daughter E. without issue, the interest on the amount bequeathed to her was directed to be paid to his widow.

As to the residue testator directed his executors to invest "all the rest and residue of my personal estate for the benefit of my beloved wife, as long as she remain my widow, and in case of her death or marriage, for the benefit of my daughter E., that is, the interest annually."

Held, that there was no vested interest in the daughter E., under the devise of the farm or of the residue which would pass to her children, and that E. having died before her mother, the daughter M. took an undivided half of the farm and of the residuary fund.

But, as to the fund of $1,000, that the daughter E. had a vested interest which passed to her children, and that the daughter M. was not entitled to participate in this fund. *Williams* v. *Thurston*, 21/357.

40. Vested or contingent interest — *Word "then."*]—Testator devised all his real and personal estate to his wife to have and to hold to her, her heirs, executors, administra-