BOYD, C.:— . . . The testator's will was dated in 1887, and he died in April, 1897. The infant grandchild now making claim was born in November, 1897; that child's father, Harry, son of the testator, died in August, 1898, and the testator's widow (the life tenant) died in August, 1908.

The will provides for payment of specified legacies to the children, which have been paid, and as to which no question arises. The residue of the estate is to be turned into money, invested by the executors, the income paid to the widow, and on her death the direction is "that all the residue of my estate is to be equally divided among all my children living at that time" (the death of the widow) "and the lawful issue of such as may be dead, per stirpes."

The testator also provided that the shares to go to Harry and James are to be dealt with according to the discretion of the executors. . . . The only point made here is that he speaks of *the shares to go to* these sons.

It is admitted that the son Harry was advanced to the extent of about $4,000 in his and his father's lifetime, and that it was agreed between them in writing that these advances were to be deducted from Harry's share of the father's estate. The other children also received advances on the same terms.

Thus the situation presented is: advances to the son Harry of moneys which are to come out of his share of the estate (the residue); the death of the son before the period fixed for division, leaving an infant; and the death of the widow, which occasions the final distribution of the estate. The infant claims the share of the estate which the father would have taken, without bringing the advances into account; the children of the testator contest this, and contend that the infant's share should be allotted in the same manner as the other shares, subject to diminution according to the amount of the advances. . . .

As I read the will, there was no vesting of the residue or any share of it till the death of the mother. The whole was kept in the hands of the trustees till then, and only then were the recipients to be ascertained. It was then, and not sooner, to go to the children who should be living and to the issue of those who died before that event. The vesting at an earlier period is not helped by the use of the word "share" in paragraph 10 of the will. The words there used are "in regard to the shares *to go to* my sons," not "the shares of my sons." The reference is to the portion that was about to go to him if he survived his mother.

Taking it then as a share of the residue which first vests in the infant, does he take it as an independent gift or not? Is he