of literary works and their copyright. If they had been made payable in periodical and fixed instalments without interest, instead of sums made up of so much a volume in each edition when it came out or on each book sold, they might be treated as comparable to the securities of which In re Earl of Chesterfield's Trusts (1883), 24 Ch. D. 643, afforded an example. And, if so, the agreed mode of payment should cause no difference. But a sale and conversion of these particular securities would have been practically impossible, and they necessarily had to wait realisation in ordinary course.

Therefore, these deferred payments, whether treated as set apart or as assets whose realisation was postponed for the benefit of the estate, were within the rule stated by Street, J., in Re Cameron (1901), 2 O.L.R. 756, followed in Re Clarke (1903), 6 O.L.R. 551.

The appeal should be dismissed; costs of all parties out of the estate—those of the executors and trustees as between solicitor and client.

GARROW, J.A., concurred.

MACLAREN, J.A., was of opinion, for reasons stated in writing, that the royalties paid to the husband during his lifetime were income. They were the proceeds of his labour, and would be assessable as income. So also the moneys received by his widow after his death, from such sources, would be part of her annual income during the year in which she received them. The moneys properly fell within the terms of clause 2 of Mrs. Kirkland's will, by which she gave the income from her husband's estate absolutely to her sisters, and which fully complied with the latter part of sec. 30 of the Wills Act, R.S.O. 1914 ch. 120. Even if clause 2 were not applicable, the moneys would properly fall within clause 3 (k) of the will as being part of the income of the residue of the estate, and as such would properly belong to the life-tenants.

Upon this question the appeal should be allowed, and the whole of the payments under the agreement should be made over to the life-tenants.

Upon the other question raised, concerning the division of the proceeds of unmarketable shares, the judgment appealed from was correct and should be affirmed.

MAGEE, J.A., concurred.

In the result, the Court being divided upon the main question, the judgment of MIDDLETON, J., stood affirmed upon all points.