trine that persons are in the habit of endeavouring to regulate the conduct of their legatees by purporting to impose penalties which they do not intend to be enforced, and which those legatees may discover from the nearest attorney to be a mere dead letter, it may be a question whether the judges might not, with advantage, have abandoned altogether the transparent pretext of trying to discover the real intention of the testator. The solution they arrived at as to the meaning of the testator's words being, in most cases, obviously opposed to common sense, one would scarcely have thought it worth their while by refining on their canons of construction to render that solution more difficult to forecast. However, various refinements have, as we all know, been engrafted on the primitive doctrine until the decisions of the Court have become extremely difficult to forecast. First a distinction has been taken between those cases in which a testator has merely declared that an interest given to a person shall cease on marriage, without any direction as to the disposition of the fund in that event, and those cases in which there is an express bequest over of the forfeited interest. The judicial mind has been much exercised as to the ground of this distinction. Sir William Grant, M.R., in *Lloyd* v. *Pranton* (3 Mer. 117), observed, "Different reasons have been assigned by different Judges for the operation of a devise over. Some have said that it afforded a clear manifestation of the intention of the testator not to make the declaration of the forfeiture merely *in terrorem*, which might otherwise have been presumed. Others have said that it was the interest of the devisee over which made the difference, and that the clause ceased to be merely a condition of forfeiture, and became a conditional limitation, to which the Court was bound to give effect."

We do not propose to comment on the judicial doubts as to this knotty point; it will be sufficient to observe that the distinction in question, whatever may be its origin, or on whatever grounds it may be upheld, has, in its application, given rise to a good deal of litigation, owing to a difference of opinion among the Judges as to whether or not a residuary bequest amounts to a sufficient bequest over to oust the *in terrorem* doctrine. Sir William Grant in the last-mentioned case, without venturing to give a positive opinion as to the effect of a simple residuary bequest, decided that a direction that the forfeited bequests should fall into the residue was as effectual as an express bequest over, and although the better opinion would seem to be that a simple residuary bequest does not amount to a bequest over, the point can hardly be said to be free from doubt.

We see then that the first limitation placed to the doctrine of conditions *in terrorem* has given rise to a doubt that is still *sub judice*.

The effect of an alternative bequest has also furnished abundant matter for controversy. If the Judges had been actuated by any *bonâ fide* desires to carry the wishes of testators into effect, it is difficult to see on what ground they should have refused to an alternative bequest the same weight as an indication of intention which they accorded to a bequest over. If a man is held to have sufficiently expressed an intention to enforce the threatened terrors of forfeiture by indicating the objects of his bounty in the event of his forfeiture taking effect, surely his intention not to rely upon any idle threat remains equally manifest if he takes the trouble to make out an alternative scheme, and, instead of naming other objects of his bounty, proceeds to apportion the relative wages of obedience and contumacy. However, it was settled by Lord Hardwicke (*Wheeler* v. *Bingham*, 3 Atk. 364), that an alternative provision in the event of non-compliance with the conditions of celibacy, on which the original bequest was granted, whether such alternative provision was settled by the testator himself, or left to the discretion of others, was not sufficient to oust the doctrine of *in terrorem*. But although the authority of that decision has, we believe, never been questioned, nevertheless it would be wrong to infer that the insertion of an alternative bequest may be left out of consideration in determining the effect to be attributed to a clause of forfeiture. Such a bequest may produce, in a different way, precisely the same effect, as regards the threatened legatee, as a bequest over may. Sometimes it will be efficacious to his detriment when a bequest over would have been innocuous, for the tendency of modern decisions has been