

posed of unto my said trustees upon trust after payment of debts and funeral and testamentary expenses to pay the income derived from residue of my real and personal estate to my said husband James Robertson Gibson during his life. And from and after his death upon trust to pay out of the said residue of my real and personal estate to my step-son James Robertson Gibson the younger or any of his issue such sum (not exceeding \$1,000) as my said husband shall by any deed or deeds or by his will appoint, but my said husband shall not be bound to make such appointment which shall be in his sole discretion and in default of such appointment and so far as any other appointment shall not extend in trust for the said Janet Gibson when she shall attain the age of 21 years—provided always that if the said Janet Gibson shall die in my lifetime or in the lifetime of my said husband leaving a child or children who shall survive me or my said husband and being a son or sons shall attain the age of 21 years or being a daughter or daughters shall attain that age or marry then and in every such case the last mentioned child or children shall take (and if more than one equally between them) the share which the said Janet Gibson would have taken if she had survived me and my said husband and attained the age of 21 years. And I declare that my said trustees may at their own discretion raise any part of the expected share of the said Janet Gibson or her child or children under this my will and apply the same for her his or their maintenance clothing education advancement preferment or benefit as my trustees shall think fit but I do not impose upon them any legal obligation to do so."

The will was dated the 16th September, 1889; the testatrix died on the 19th January, 1890. Janet Gibson died on the 12th May, 1900, without issue. James Robertson Gibson senior died on the 27th March, 1907.

The appeal was heard by MOSS, C.J.O., OSLER, GARROW, MACLAREN, and MEREDITH, J.J.A.

W. E. Middleton, K.C., for the plaintiff.

G. Wilkie, for the defendants.

MOSS, C.J.O., said that the question was whether, in the events which happened, Janet Gibson (or Stewart) died seised of or entitled to the lands in question in remainder expectant upon the death of James Robertson Gibson. But for the introduction into the proviso in the 5th clause, of the words "or in the lifetime of my said husband," the clause would be perfectly simple. The testatrix gave to her husband an estate for life, and subject thereto she gave the estate in fee to Janet Gibson. If the clause had stopped there,