No. 5104 Equity.

Future contingency - Blackstone 2 Book 170.

It is not the uncertainty of enjoyment in the future, but the uncertainty of the right to that enjoyment which marks the difference between a vested and contingent interest - 4 Kent 206.

In the case before the Court, there was uncertainty as to the enjoyment of the estate; that depending upon the fact whether the life tenants consume the whole of the property left to them or not. But the right to the enjoyment is certain, being fixed in the Heirs of the Testator. In Burleigh v Clough, 52 N.H. 267, where the will was: "I give & all my estate, both personal and real, or mixed" xxxx "to her the said H. H. to her use and disposal during her natural life, and what is remaining at her decease undisposed of by her, I give and devise and bequeath unto J. E. D. and his heirs and assigns forever" the Court decided, that H. H. took an estate for life, with power to defeat the remainder, and that J. E. D. took, not an executory devise but a vested remainder. So in this analagous case, the sisters took an estate for life, with power to defeat the remainder, by consumption of the property, and the heirs of the Testator took a vested remainder. A person's heirs, are those who would, under the statute of distribution in this state, be entitled to the property of the person at the time of his death. In this instance, if the party had died intestate, his brothers and sisters would have inherited his estate equally; but the sisters, by the provisions of the will, being out of the way, the two brothers, William and Thomas, must be considered the heirs in whom the estate in remainder vested on the death of the Testator. A devise or bequest of property to the Testator's heirs at law, means those who are such at the time of his decease, unless a contrary intent is very obvious. Mere conjecture, or surmise, is not sufficient 1 Redfield on Wills, sec. 21. Under our statute of distributions, the children of deceased brothers and sisters take per stirpes and not per capita. The word "then", in the latter part of the clause under consideration, according to our construction of the language, refers to the time of distribution, and not to the time of ascertaining what is to be distributed, nor to the time of the vesting of the remainder. The general Rule is that the words of a devise speak from, and at the death of the Testator, unless there is a paramount intention apparent upon the face of the will that he meant otherwise. And in our opinion, there is nothing upon the face of this will to show that the Testator intended to postpone the time of determining who were his heirs, until after the death of all his sisters. If it be admitted that the sisters took a fee instead of a life estate, the distribution under our Act of Assembly, would be the same as above stated, per stirpes, and not per capita. This fund must, therefore, be so divided. It is thereupon, this 9th day of April A.D. 1886, by the Circuit Court for Frederick County, as a Court of Equity, and by the authority thereof, adjudged, ordered and decreed that the proceeds of the sale as reported by the Trustees, be distributed, after allowing all necessary costs and expenses, one half among the seven children of said William Plummer, and the other half among the four children of the said Thomas Plummer.

John A. Lynch, Judge of the Cir. Court.