

## No. 6540 Equity.

would happen were, of course, uncertain. Her daughter was married and had children, and the grand-daughter was single when the will was made. There were but two possible periods to which the provisions relating to the death of the remainderman could apply; and these were, first, the death of the remainderman in the life-time of the life tenant, and secondly, the death of the remainderman after the decease of the life tenant. To which of these periods do the clauses creating the contingent remainders apply? I think beyond question to the first. In other words, the testator manifestly meant that if his daughter, Mrs. Taber, should die during the life of Mrs. Sims and leave no children surviving her, then and in that event, the daughters two-thirds should take in the grand-daughter; and if the grand-daughter should die without issue in the life-time of her grand-mother Mrs. Sims the life-tenant, then and in that event the grand-daughter one-third should take in the daughter. In no other way could the general rule which favors the adoption of the earliest period for the vesting of an estate be gratified, and beyond this in no other way could a clause, I am about to quote be given any intelligent interpretation. That clause, succeeding all the others, is in these words:

"In case my said daughter Anna be, and my grand-daughter Mary Kemp Sims shall each die without lawful issue then living or the children of said lawful issue, I then devise my estate at the death of my wife, to my nephews and niece to be divided 'per capita'." The very phrasing of this clause demonstrates that the testator had reference in the antecedent clauses to the death of the remainderman during the life of his wife. He first made provision for a contingent remainder as to the daughters two-thirds in favor of the grand-daughter, upon the death of the daughter without issue; he next made provision for a contingent remainder as to the grand-daughter's one-third in favor of the daughter upon the death of the grand-daughter without issue. He did in terms say neither their deaths had relation to the period of the life tenant's life or the period after her death and the law steps in in favor of an early vesting of estates and adopts the former period in the absence of a clear intimation to select the later period. But in the clause just quoted there is no room for doubt, he then made provision for the contingency of the death of both the remainderman and in explicit terms he declared that if they should die without lawful issue "I then devise my estate at the death of my wife" to nephews and niece. That is to say, in the event that both his daughter and grand-daughter should die without issue in the life time of his wife, he gave the remainder to