

the remainder was to take effect in possession. In the latter case the share of the deceased daughter was granted to her surviving sisters, and if the former event happened, the limitation was in favor of her issue. The contingency of the death of a remainderman with or without issue is plainly referable to the period anterior to the termination of the interest of the tenant for life. If it were to be referred to a later point of time it would qualify and curtail the complete and absolute title which the deed distinctly conveyed to the children specifically mentioned as entitled to the estate in remainder. The effect of the grant was simply and clearly to vest the fee in the children of Mrs. Mary Thomas provided they were living when her life estate expired, and if any of them died in the meantime, their shares were to go to their issue, if any such were in existence, and if not, then to the surviving sisters.

In the recent case of Booth vs. Eberly, decided at the April Term of the Court of Appeals, and not yet reported, a testatrix had provided a trust estate for the benefit of her husband for life and directed that from and after his death the estate should go to her son Daniel, but that if he should die without leaving issue living at the time of his death, it should pass to her nephews and nieces. The son died without issue after the death of the testatrix and before the termination of the life estate devised to his father. The proceeding which like the present, was for the purpose of partition was instituted by a nephew and a grand nephew of the testatrix, and the objection was raised, as here, that the plaintiffs had no interest in the subject matter of the suit. It was urged that according to the true intent of the will the event upon which the contingent remainder to her nephew and nieces, or their children, depended was the death of the son, Daniel, without issue, in the lifetime of the testatrix, and that since he lived beyond that period the estate devised to him became indefeasibly vested in him, and upon his death intestate, unmarried and without leaving issue, brothers or sisters, his interest in the property was inherited by his surviving father and passed under the will of the latter to his devisees.

This contention was overruled, and it was held to be the evident purpose of the Will that the estate in remainder should vest in possession in the son only from and after the death of the father, and that if the son should in the meantime die without issue, the estate should pass to the ultimate remaindermen." In support of this view the opinion of Chief Judge Alvey in Engle Vs. Geiger, 65 Md. 544, was quoted as follows--"As a general rule it is certainly true that that in the case of an immediate gift with a bequest over in the event of the death of the first or preceding legatee, the event of death is referable to the lifetime of the testator. But it is explicitly laid down as text law that this construction is only made ex necessitate rei, from the absence of any other period to which the words denoting the event of death can be referred. Subsequently when there is another point of time to which the dying may be referred, as in the case when the bequest is to take effect in possession after a life estate, or at any period subject to the testator's death, the words may be considered as extending to the event of the legatee dying in the interval between the testator's death and the period of vesting in possession, or the time of actual distribution, as will best promote the intention of the testator, to be gathered from the context of the will. 3 Jarnum on Wills, 611." The opinion in Booth Vs. Eberly cited as causes in which the doctrine just stated had been applied Straus Vs. Rose, 67 Md., 476; Hammett vs. Pearce, 80 Md. 445; Mercantile Trust & Deposit Co. Vs. Brown, 71 Md. 169; Badley vs. Lowe, 67 Md. 592.

Upon the principle thus defined and supported the Court can have no hesitation in giving effect to what appears to be the purpose of the instrument under construc-