

must have been then married; or thirdly, she must after the death of her mother have been married; or fourthly, after that event she must have lived to attain the age of twenty-one years. Upon the happening of any of these circumstances an interest in a due proportion of this legacy vested in each daughter so qualified, as a tenant in common, with her other sisters, who should, in like manner, then be or thereafter become entitled to a share.

The legacy is directed to be equally divided among all, if all should become so qualified to take. Hence, on the death of the mother, leaving six daughters, it became liable, upon the happening of the specified contingencies, to be divided into six equal parts; each one of which could only vest as each daughter, who then was, or thereafter became qualified to take. But as, upon the death of any one of the six daughters before she became entitled to take, her share would fall in for the benefit of the rest; or in other words, the whole legacy would not, in such case, be divided into so many as six parts; the number of shares into which it must ultimately be divided cannot be finally determined until it shall have been ascertained, whether or not any have died without having been qualified to take, after the youngest of them shall have been married, or shall have attained the age of twenty-one years. Before the institution of this suit, on or after the death of the mother, three parts of this legacy became vested in those of her daughters who were then or thereafter of full age or married; and one other part, after the filing of this bill, became vested in the defendant Elizabeth Clerklee, who attained her full age. And, consequently, the two remaining parts must await the event of the marriage, or coming of age of the two now unmarried infant daughters; until the happening of one or the other of which contingencies, or the death of either or both of those infants previous thereto, they first, and next their sisters, have an expectant interest in those two parts of this legacy, to meet the happening of which event the amount of those shares must be still retained in trust.

But it has been contended, that this legacy has been transferred * to this country, and lost without the default of the trustee, and therefore, that these plaintiffs cannot recover any thing, **289** or certainly no more than a proportion of what has been saved, and is now in the hands of his executrix the defendant Eleanor Dawson; since it has been expressly declared by the testatrix Ann Russell, that "they, the trustees, shall not be answerable or accountable for any misfortune, loss, or damage whatever, that may happen to the said trust moneys, or premises, or any part or parts thereof, unless the same shall happen by or through their or his gross and wilful neglect or default respectively."

It is distinctly shown by the codicil to this will, and so admitted that the testatrix Ann Russell made her will with a full knowledge of the situation and legal capacities of all her legatees. She