

Tuesday, January 20.

SECOND DIVISION.

SPECIAL CASE—DICKSON AND OTHERS
(CORSAR'S TRUSTEES) v. CORSAR AND
OTHERS.

*Succession—Bequest of Residue—Period of Vesting
—Discretion of Trustees as to Vesting.*

A testator divided the residue of his estate, including his interest in a going business, into two portions—the first (out of which an annuity and other payments were to be made) being appropriated in liferent to his widow, in addition to a house and garden also left her; the second not so appropriated. After satisfying certain legacies and other payments, and setting aside a sum to meet the provisions for his widow, the trustees were to “account for, divide, and pay over” the residue to the testator's children and grandchildren. There was then a provision that “at and upon the decease or second marriage of my said spouse” the subjects to be liferented by her, and the capital stock set apart for her allowances, and “all remaining subjects, funds, and effects belonging to my estate, or the prices or proceeds thereof,” should be divided amongst the children, or in the event of their predecease, their issue; “and failing any of my said children by death without leaving lawful issue before receiving the shares hereby provided to them, the said shares shall be divided equally among the survivors of my said children above named or to be procreated, or the lawful issue of those predeceasing, as representing their respective parents, *per stirpes*, in manner above specified; declaring . . . that the shares hereby provided to my said children or grandchildren, named or to be procreated, after the same shall have been ascertained and become payable as above mentioned, shall be paid to them after they shall have respectively attained the age of twenty-one years complete, or if females, upon being married previously; it being hereby specially conditioned and provided and declared to be the essential and true intent and meaning hereof, and according to which my said trustees shall act, . . . that all my children shall share equally in my estate and succession; and that with regard to those dying before receiving implement hereof, their children shall succeed equally to their father's or mother's share; and failing children, the shares of those deceasing shall fall to the survivors and to the children of those predeceased, each child or family being hereby declared to form a distinct class,” &c. It was further provided that the income of shares was to be applied for the maintenance of the parties in question “until the respective periods of payment thereof shall arrive.” With regard to the testator's interest in the manufacturing business of which he was a partner, it was provided—
“As my desire is to secure the prosperity of

my sons while remaining partners of the said company, I hereby give to my trustees full discretionary powers as to the time of exacting payment of the said instalments” (in which form his share in the concern was to be paid), “and I hereby express my wish that the payments may not be rigorously enforced so as to put the company to much inconvenience: And my said trustees shall have full liberty to allow the said instalments to remain at interest as above mentioned, if they find this course conducive to the credit and prosperity of the company, and not prejudicial to the other parties beneficially interested herein.”

In a subsequent codicil there was this provision—“My chief desire being for the maintenance and stability of the business, I direct my said trustees, in the event of the same being carried on by my sons, to be as liberal towards the parties composing the company-firm as circumstances will admit, and therefore the company-firm in which my sons shall be engaged shall be allowed the use of as much of my capital remaining at my credit at my decease as can be spared and as the company can find employment for, and that with or without security. . . . Whenever my daughters' interests and provisions can be secured and removed from the risks and losses incident on trade, I hope my sons will enable my said trustees to complete and carry out such security.” These provisions to the children were declared to be in lieu of *legitim*.

Held that in regard to the first portion of the estate, which was liferented by the widow, vesting only took place at her death, but that the rest of the estate must be held to have vested at the date of the testator's death.

Observed that in order to suspend the vesting in such a case, either according to the discretion of the trustees, or till the period of the widow's death, the language must be more precise and unambiguous than any to be found in the clauses quoted above.

Observed per Lord Ormidale that the result might have been different if in regard to the children's provisions the testator had used the expression “receiving payment” instead of “receiving implement” hereof.

Counsel for Parties—Patten—J. P. B. Robertson—Wallace—Barclay. Agents—Webster, Will, & Ritchie, S.S.C.—Rhind, Lindsay, & Wallace, W.S.—T. F. Weir, W.S.

Tuesday, January 20.

SECOND DIVISION.

SPECIAL CASE—BRUCE AND OTHERS.

*Succession—Testament—Words of Bequest—
“Anxious Desire.”*

A testator left his whole moveable estate absolutely to his wife, with the expression of an “anxious desire,” and elsewhere “of a hope,” that she should make a will leaving the amount “which may pertain and be resting-