*JOHN DOE, LESSEE OF JACOB CHEESMAN, PETER CHEESMAN AND SARAH, HIS WIFE, BEERSHEBA PARKER, WARD PEARCE, JOHN CLARK AND MARGARET, HIS WIFE, ANN JACKSON, WILLIAM JACKSON, SEWARD JACKSON, AND MARY JACKSON, ——— WATSON AND SARAH, HIS WIFE (LATE SARAH PEARCE), WILLIAM PEARCE, WARD PEARCE, MIRABA EDWARDS, JAMES EDWARDS, RICHARD PEARCE, WILLIAM, JAMES, AND MARGARET PEARCE, THOMAS MORRIS AND MARY, HIS WIFE (LATE MARY PEARCE), ELIZABETH POWELL (LATE ELIZABETH PEARCE), JACOB WILLIAMS AND ELIZABETH WILLIAMS, SARAH SMALLWOOD, DEBORAH BRYANT, GEORGE L. HOOD AND LETITIA, HIS WIFE, IN HER RIGHT, JOSEPH SMALLWOOD, JOSEPH HURFF, JANE TURNER, JOHN BROWN AND MARY, HIS WIFE, IN HER RIGHT, WILLIAM SMALLWOOD, ISAAC HURFF AND ELIZABETH, HIS WIFE, IN HER RIGHT, RICHARD SHARP AND MARIAM, HIS WIFE, IN HER RIGHT, RANDALL NICHOLSON AND DRUSELLA, HIS WIFE, IN HER RIGHT, JACOB MATTISON AND JEMIMA, HIS WIFE, IN HER RIGHT, JOSEPH NICHOLSON AND MARIAM, HIS WIFE, IN HER RIGHT, THOMAS PEARCE, AND MATTHEW PEARCE, (ALL CITIZENS OF NEW JERSEY,) PLAINTIFF IN ERROR, *v.* THOMAS WATSON, DEFENDANT.

Where a testator made certain devises to his two grandchildren, "provided, and the legacies herein before devised are upon this special condition, that, if both my said grandchildren shall happen to die under age and without any lawful issue, then it is my will that three fourth-parts shall be equally divided between Sarah Smallwood and others," &c., and the two grandchildren lived many years after they arrived at full age, and then both died without issue, the devise over to Sarah Smallwood, &c., never took effect, because the two grandchildren both arrived at full age.

The plaintiffs below having claimed the whole as the heirs of Sarah Smallwood, the court instructed the jury that they could not recover. But the plaintiffs below claimed, in this court, that they were entitled to recover a part, because they were a portion of the heirs of the two grandchildren. This point was not made in the court below, and therefore cannot be made here.[1]

The Supreme Court of Pennsylvania decided, with regard to this very will, that the devise over to Sarah Smallwood never took effect. This decision was made in 1795, and the acquiescence of half a century would seem to close all litigation under the will. But even if it did not, this court is of the same opinion.

THIS case was brought up, by writ of error, from the Circuit Court of the United States for the Eastern District of Pennsylvania.

[1] S. P. *Barrow* v. *Reab*, 9 How., 366; *Newell* v. *Nixon*, 4 Wall., 572; *Railroad Co.* v. *Lindsay*, Id., 650.

It was an ejectment brought by the lessee of Cheesman, &c., to recover certain lots in the city of Philadelphia. As the defendant below offered no evidence but contested the validity of the title shown by the plaintiff, it is necessary to set that forth. It was as follows, viz.:—

The plaintiff gave in evidence the deed of conveyance from the Proprietors of Pennsylvania, Thomas and Richard Penn, to James Parrock, bearing date 5th September, 1749, under the great seal of the Province.

*264] *Also, the last will and testament of James Parrock, bearing date 24th May, 1754, admitted to probate 24th January, 1755.

One of the arguments of the counsel for the plaintiff in error being founded upon the presumed intention of the testator, as gathered from a comparison of several clauses in the will, it becomes necessary to insert them.

The devises contained in the will material to this controversy are, in substance, the following:—

1. To his wife, Hannah Parrock, of his dwelling-house, kitchen, and lot of ground in Second and Sassafras Streets, together with various rent charges issuing out of lots of land, to hold during her life, with remainder of the said dwelling-house, kitchen, and lot of ground, and certain of those rent charges, to his granddaughter, Sarah Parrock, and her heirs; and as to the other of said rent charges to his grandson, John Parrock, and his heirs.

2. To his wife, Sarah Parrock, for life, the use of certain goods and chattels; and to his grandson, John Parrock, certain other goods and chattels.

3. To his grandson, John Parrock, and his heirs, his bank and water lot in the Northern Liberties of said city, in breadth 50 feet, and depth into the Delaware 254 feet, and his piece of upland and meadow in the Northern Liberties of about fifty-six acres, and his bank and water lot in said city, in breadth 71 feet, in length or depth into the Delaware River 250 feet; also certain rent charges.

4. To his granddaughter, Sarah Parrock, and her heirs, a tenement and lot of ground, adjoining the messuage and lot before devised to her; also another piece of ground, in breadth, north and south, 22 feet, in length and depth, east and west, 51 feet, bounded westward by an alley, &c., northward by M. Hilliga's lot, &c.; also his bank and water lot in said city, in breadth 40 feet, in length 250 feet, into the River Delaware, bounded by Sassafras Street, by Front Street, and by Leeches' lot; with certain other rent charges.

5. He then devised to his said granddaughter Sarah, and

his said grandson John, all that his pasture or piece of land in the Northern Liberties, by Oldman's land, Daester's land, and the York road, containing three acres, to be equally divided between them, to said John and his heirs, and to said Sarah and her heirs.

6. The testator then devised, in these words and figures:—

"And I do hereby empower and order my said executors, and the survivor of them, to sell and dispose, as soon as my said grandchildren shall come of age, all that my piece or lot *of ground, situate on the south side of Vine [*265 Street aforesaid, about seventy-one feet from said Second Street corner, and extending east sixteen feet and one half, to Preserve Brown's lot; south, fifty-one feet, to John Denton's lot; west, by said Denton's lot, sixteen feet and an half; and north, fifty-one feet, by John Marle's lot; together with the appurtenances, to any person or persons that will purchase the same, and for the best price that they can reasonably get; to hold to such purchaser or purchasers, his heirs and assigns, for ever; and to give good deeds, or other sufficient conveyances; and the moneys arising by reason of said sale shall be equally divided between my said two grandchildren, John and Sarah Parrock, share and share alike."

7. He devises a house and lot to "Mary Parrock, the widow of my son John Parrock, deceased, and mother of my said grandson, John Parrock," and to Lydia Cathcart, a house and lot,—"to hold the said messuage so devised to said Mary Parrock during the term of her natural life, if she shall so long continue my said son's widow. And to hold the said last-mentioned messuage unto the said Lydia Cathcart, during the term of her natural life, if she shall so long continue a widow. And from and immediately after their, or either of their (the said widows) decease, day, or days of marriage, then I give and bequeathe all and singular the said two messuages unto my said grandson, John Parrock, to hold to him and his heirs and assigns forever."

8. The testator gives pecuniary legacies to said Mary Parrock and Lydia Cathcart; to the children of John Smallwood, deceased, his wearing apparel; and pecuniary legacies to the children of William and Mary Paschal; to Sarah Smallwood, the widow of John Smallwood, deceased, and to Sarah James and Hannah James, he gives pecuniary legacies.

9. "And it is my will that the several and respective legacies herein before devised unto my grandson John Parrock, and unto my granddaughter Sarah Parrock, shall be paid and delivered to them as they shall respectively come of age."

10. The testator devised all the rest and residue of his per-

sonal estate unto his wife Hannah, his said grandson John, and his granddaughter Sarah, to be equally divided between them.

11. "Provided always, nevertheless, and the several legacies herein before devised unto my said grandson John Parrock, and my said granddaughter Sarah Parrock, are on this special condition, that if both my said grandchildren shall happen to die under age, and without any lawful issue, then it is my *266] will" that the one fourth part of all and singular the real and personal *estate unto them herein before devised shall go to the monthly meeting of the people called Quakers, at Philadelphia; and the other three parts of said real and personal estate shall be equally divided between "the said Sarah Smallwood, the widow of John Smallwood, and their children; the children of Thomas Smallwood; the children of Benjamin Richards; the children of William Paschal, deceased; the said Sarah Paschal, said William Paschal; widow Lydia Cathcart and her children; Joseph Fordham and his children; Richard Fordham and his children; the children of Isaac Ashton, deceased; Sarah Thomas and her children; Mary Lee and her children; Lydia Davis and her children; John Spencer and his children, and to the survivor of them, and to the heirs and assigns of such survivors or survivor, as tenants in common, (and not as joint tenants,) forever; anything heretofore contained to the contrary thereof in any wise notwithstanding."

In addition to that written evidence, the lessors of the plaintiff gave evidence by the mouths of witnesses, conducing to prove that the granchildren of the testator, John Parrock and Sarah Parrock, both died without issue and unmarried; that both said John Parrock and Sarah Parrock had attained full age before their respective deaths, and died long after the death of the testator; that said John Parrock died about the year 1790; that Peter Cheesman and wife (who was Mary Smallwood) were both related to John Parrock,—said Peter Cheesman married his relation; that John Smallwood and James Parrock were half-brothers; with other evidence of the genealogy of the lessors of the plaintiff; and that John Smallwood was dead when the will of James Parrock was made.

The defendant gave no evidence.

The counsel for the plaintiff then prayed the court to give the following instruction to the jury, viz.:—

"If the jury believe the evidence given by the plaintiffs of pedigree, then, under the true construction of the will of James Parrock, the plaintiffs are entitled to recover; it being proved by plaintiffs that both John Parrock, the grandson,

and Sarah Parrock, the granddaughter, died over age, and without issue."

But the said learned judges refused to charge the jury as so requested, and gave in charge to the jury, that under the said will the plaintiffs could not recover, inasmuch as the devise over to plaintiffs' ancestors, in the said will mentioned and contained, never took effect, by reason of the devisees therein named, viz., John Parrock and Sarah Parrock, having both arrived at full age.

To this instruction the counsel for the plaintiff excepted, and *upon it brought the case up to this court. [*267
The jury, of course, found a verdict for the defendant.

It was argued by *Mr. Bibb*, for the plaintiff in error, and by *Mr. Wharton* and *Mr. Meredith*, for the defendants.

Mr. Bibb made the following points:—

I. That the charge as actually given by the court was erroneous, because it limited and confined the derivation of title of the lessors of the plaintiff solely to the question of their being devisees of James Parrock, to the total exclusion of the right of each and every of the lessors, as heir or heirs of either said Sarah Parrock or of said John Parrock, the immediate devisees of James Parrock, who, or one of which said grandchildren, became the stirpes or root of descent and inheritance.

II. That the court erred in the construction of the will and testament of James Parrock as given in charge to the jury, and in refusing the charge as moved by the counsel for the plaintiff.

It is not necessary to state *Mr. Bibb's* argument upon the first point, because this court decided that the point had not been made in the court below, and therefore could not be made here.

III. That the court erred in the construction of the will and testament of James Parrock, as given in charge to the jury, and in refusing the charge as moved by the counsel for the plaintiff.

This leads to the inquiry into the true intent of the testator. The intention of the testator is to be sought upon the whole instrument, taken in all its parts as one whole. The words must follow the intent of the devisor. The sentences may be transposed to preserve the meaning of a will. One part of a will shall be expounded by another.

These rules are to be observed:—"1st. No will ought to be construed *per parcellus*, but by entireties. 2d. To admit

of no contrariety or contradiction. 3d. No nugation or any nugatory thing, ought to be in a will." 8 Vin. Abr., *Devise F. a*, p. 181, pl. 11, 12, 13; 5 Bac. Abr., *F.*, p. 522, pl. 13; *Sparks* v. *Purnell*, Hobart, p. 75, pl. 93; *Bamfield* v. *Popham*, 2 Freem., 267; *Frogmorton* v. *Holyday*, 3 Burr., 1622.

To effectuate the intent of the testator, the word "or" shall be taken for "and," and the word "and" for "or." Out of the multiplicity of decisions and examples on that of "or" instead of "and," and "and" instead of "or," the following will suffice:—*Jackson* v. *Jackson*, 1 Ves., Sr., p. 217, case 113; *Maberly* v. *Strode*, 3 Ves., 450–454; *Bell* v. *Phyn*, 7 Ves., 458; *Read* v. *Snell*, 2 Atk., 642, case 351; 8 Vin. Abr., *Devise F. a*, 2, p. 187, pl. 1.

*268] *Construing the will of James Parrock by the rules aforementioned,—not looking to this or that parcel, or this or that devise alone, but viewing all its parts as one whole, to find the intent of the testator,—the just conclusions are,—

1st. That if his grandson John had died leaving issue at his death, that issue should have taken the part devised to him. So, likewise, as to the part devised to the granddaughter Sarah, if she had died leaving issue at her death, her issue would have taken that part. That intent is manifested by the devises to them respectively, and their heirs, in the fore part of the will.

2d. That the testator intended, by the after clauses in his will, to qualify the estates respectively devised to his said grandchildren, both real and personal, by annexing the contingency to each estate, of having lawful issue of their respective bodies living at their respective deaths.

3d. That he intended, if the one or the other of said grandchildren should die, leaving no issue lawfully begotten, the survivor should take the whole, subject to the contingency of leaving lawful issue at his or her death.

4th. That, in the event that both his said grandchildren should die leaving no lawful issue, then the estate, real and personal, should go, one fourth to the Quaker Society at Philadelphia, and the other three fourths to be equally divided between the persons named in the devise over to Sarah Smallwood and others.

5th. That the testator intended to give to each of his said grandchildren only estates tail in the lands; and that the survivor of the two should, in case of the prior death of the other, without leaving lawful issue at his or her death, take but an estate tail, or an estate subject to the executory devise.

6th. The testator did not intend to give to either of his said grandchildren a clear, unencumbered, vendible estate, upon which either could raise money by sale at full age; but intended to continue and perpetuate the estate in the family, as far forth as the law would tolerate such a perpetuity; and so intending, he therefore empowered and ordered his executors to sell a specified parcel of his real estate "as soon as my said grandchildren shall come of age," and divide the money thence arising equally between his said grandchildren.

Mr. Wharton and *Mr. Meredith*, for defendant in error.

The only question before the court below was the construction of the will of James Parrock. The plaintiff's lessors pretended no other title than that of devisees of the said James Parrock. They did not claim, nor pretend to claim, as heirs at law, or *statutory heirs, of John and [*269
Sarah Parrock, or either of them. After the evidence on their part was closed, (the defendant having offered none,) the plaintiffs' counsel requested the court to charge the jury, that, "if the jury believe the evidence given by the plaintiffs of pedigree, then, under the true construction of the will of James Parrock, the plaintiffs are entitled to recover; it being proved by plaintiffs, that both John Parrock, the grandson, and Sarah Parrock, the granddaughter, died over age, and without issue." The court refused so to charge, but instructed the jury that, under the will, the plaintiffs could not recover, inasmuch as the devise over to the plaintiffs' ancestors never took effect. And to this charge the plaintiffs excepted; and it is the only exception or point of law arising from the record. So that the plaintiffs in error cannot now raise a new point in this court, which they never took below, and thus shift their ground of claim and title. Their evidence was directed to the point of establishing their right as heirs of the devisees named in the will, and not as heirs of John and Sarah Parrock, and they made out no such title by their evidence.

Then, as to the construction of the will of James Parrock. What was the intention of the testator?

He had given certain property to his wife, for life; and, after her decease, he had devised certain portions of it to his grandson, John, in fee, and certain other portions of the same to his granddaughter, Sarah, in fee. With respect to the Vine street property, he had ordered that to be sold by his executors, so soon as John and Sarah came of age, and the money arising from the sale to be equally divided between the two grandchildren. There was, thus, with respect to this property, an equitable conversion of the realty into personalty,

in case the devisees attained their majority. See *Burr* v. *Sim*, 1 Whart. (Pa.), 252; *Simpson* v. *Kelso*, 8 Watts (Pa.), 247; *Reading* v. *Blackwell*, 1 Bald., 166. Having thus provided for his two grandchildren, he looked to the contingency of both dying under age, and without issue; and, in that event, and in that event alone, he declared that one fourth of the property devised to them should go to the monthly meeting of the people called Quakers, at Philadelphia, and the other three fourths should be divided between Sarah Smallwood and the other persons named and described in the will.

The title of the plaintiffs, even if they should establish their pedigree, depends altogether upon their showing that both John and Sarah Parrock died under age, and without any lawful issue. And upon the trial they distinctly showed, that neither of said devisees died under age. Where, then, is their title?

*270] *The construction of this will is settled by adjudicated cases, in Pennsylvania and elsewhere. *Lessee of Cheesman* v. *Wilt*, 1 Yeates (Pa.), 411, in 1795, is a case upon this very will; and was an ejectment for part of the property claimed under the executory devise to the plaintiff's lessors. The Supreme Court of Pennsylvania held the case to be "extremely clear," and that the remainders could only take effect upon the happening of both contingencies, namely, the dying under age and without issue. Having no doubt, the court refused to reserve the point upon the construction of the will.

In *Welch* v. *Elliott*, 13 Serg. & R. (Pa.), 205, under a devise of certain land to the testator's son, Robert, after the death of his mother, and in case Robert "departs this life before he is of age, or without lawful issue," the land was given to another son, in fee, upon certain conditions. Robert having attained the age of twenty-one, but died without issue, it was held that he took an estate in fee-simple indefeasibly. Chief Justice Tilghman, in this case, (p. 206,) says,—"That the estate in fee of Robert would have become indefeasible, either by his attaining the age of twenty-one or having issue, has been so repeatedly decided, that, on that point, I will only refer to two cases." The cases referred to by him are *Holmes* v. *Holmes*, 5 Binn. (Pa.), 552, and *Hauer* v. *Sheetz*, 2 Id., 532.

In the last of these cases, under a devise to one son of testator, F., and in case he should die under the lawful age of twenty-one, *or* without issue, his share should go to another son, P., it was held that *or* should be construed *and*, and that F, having attained twenty-one, and died afterwards without

issue, an indefeasible fee vested in him, and descended to his heir at law. "This has been the uniform construction of this clause in wills," says Tilghman, C. J. (2 Binn. (Pa.), 544), from the case of *Price* v. *Hunt*, Pollexfen, 645, in the year 1684. To the same effect are *Carpenter* v. *Heard*, 14 Pick. (Mass.), 449, and *Dallam* v. *Dallam*, 7 Har. & J. (Md.), 220, and many other cases.

There was no looking on the part of the testator to an indefinite failure of issue, as one of the contingencies. On the contrary, the intent was, to provide for this contingency within a limited time, namely, at the death of the devisees; inasmuch as the devise over was to persons in being. But the rule of construing the first devise an estate tail has no application, where the contingency mentioned in the will is that of "dying under age and without issue;" for, as is shown by the authorities, the estate becomes an indefeasible fee in the first taker, upon the occurrence of either of the two events.

*Mr. Justice McLEAN delivered the opinion of the [*271 court.

This is a writ of error, which brings before us a judgment of the Circuit Court of the Eastern District of Pennsylvania.

The lessors of the plaintiff brought an action of ejectment to recover certain premises, generally described in the declaration, and situated in the city of Philadelphia. To sustain the right claimed by the plaintiff, a deed of conveyance from Thomas and Richard Penn, the original proprietors of Pennsylvania, for the premises in controversy, dated the 5th of September, 1749, to James Parrock, was given in evidence. The will of James Parrock, dated the 24th of May, 1754, was then read to the jury, in which, after making several devises to his grandchildren, John Parrock and Sarah Parrock, their heirs and assigns, he adds,—"Provided always, and the legacies hereinbefore devised to the said John and Sarah are upon this special condition, that if both my said grandchildren shall happen to die under age and without any lawful issue, then it is my will that one fourth part of all and singular the real and personal estate to them before devised shall go to the monthly meeting of the people called Quakers; and the other three fourth parts to be equally divided between Sarah Smallwood and others, and to the survivors or survivor, as tenants in common forever."

It was proved that John Parrock and Sarah Parrock lived many years after they arrived at full age, and that both died without issue, long after the death of the testator. Evidence

was offered conducing to prove that the Smallwoods named in the will descended from John Smallwood, the half-brother of the testator, and that the lessors of the plaintiff were connected with the persons to whom the devise over was made. No evidence was given by the defendant. And the lessors of the plaintiff prayed the court to instruct the jury: "If they believe the evidence given by the plaintiffs of pedigree, then, under the true construction of the will of James Parrock, the plaintiffs are entitled to recover; it being proved by the plaintiffs that both John Parrock, the grandson, and Sarah Parrock, the granddaughter, died over age and without issue."

"But the court refused to charge the jury as so requested, and gave in charge to them, that under the said will the plaintiffs could not recover, inasmuch as the devise over to plaintiffs' ancestors, in the said will mentioned and contained, never took effect, by reason of the devisees therein named, viz., John Parrock and Sarah Parrock, having both arrived at full age." To which an exception was taken.

The form of the charge prayed is not free from objection. *272] It assumes the sufficiency of the evidence to prove the heirship *of the lessors of the plaintiff, if the jury should believe it. Now the evidence was somewhat vague and uncertain, and the jury might well have doubted whether the heirship was proved. But the instruction given waives this objection. From the instruction, as well as the prayer, it is clear that the claim of heirship was as descendants of the persons named in the will, to whom the property was devised over.

In the argument here, the counsel for the plaintiff asks the reversal of the judgment, on the ground, that the instruction was against the right of the lessors, or any part of them, to recover, although proved to be the heirs at law of John and Sarah Parrock.

The attention of the Circuit Court was not drawn to this point, no instruction was asked in regard to it, and it cannot now be made. The construction turned upon the contingent devise, and as that was held not to have taken effect, the court instructed the jury that the lessors of the plaintiff could not recover. This instruction was explicit, and could not have been misunderstood by the counsel in the Circuit Court; and as this was excepted to, and no other one prayed, it presents the only question for our consideration.

This devise was brought before the Supreme Court of Pennsylvania at January term, 1795, in the case of the *Lessee of Cheesman* v. *Abraham Witt*, and the court then held that the devise over did not take effect. They decided "that the

remainders over could only take place on the happening of both contingencies,—the grandchildren who were the primary devisees dying under age and without issue." 1 Yeates (Pa.), 411.

A decision thus made, and which seems to have been acquiesced in for more than half a century, within which time the property by descent or otherwise must have passed through the hands of persons who belonged to two or three generations, and which has necessarily become a rule of property, would seem to close all litigation under the will. But if the question remained open and unaffected by the lapse of time, the change of owners, and the great increase of value in the property, we should have difficulty in coming to any other decision than the one above stated.

We assent to the rule, that, in construing a will, the intention of the testator must govern. And that intention is to be ascertained from the whole instrument. If the intent of the testator be apparent, effect will be given to it, though he may have used inappropriate terms to attain his object. Under such circumstances, the conjunctive "and" may be read as the disjunctive "or," or the disjunctive may be changed into the conjunctive. *But this latitude of construction is never exercised where the language of the will is explicit, and the intent of the testator is not doubtful. In such a case, the import of the words used must be taken. [*273

In the fore part of the will, specific devises are made of real property to his two grandchildren by the testator, and when "they shall come of age" he directs his executors to sell a certain lot and divide the proceeds between them; and certain other pecuniary legacies are given to them to be paid at the same time; also, they are declared to be the residuary legatees of the testator. The condition then follows, that "if both my grandchildren shall happen to die under age and without any lawful issue, then it is my will that," &c. This devise over includes the personal as well as the real estate devised.

That the testator intended to give the property devised to his grandchildren and to their issue is clear, and from this it is argued, with some force, that he intended the devise over to take effect on the contingency that they should die without issue, though after they become of full age. To effectuate this, it would be necessary to change the word "and" into "or," so that the devise over should read, "if both my grandchildren shall happen to die under age, *or* without any lawful issue," &c.

To this reading is opposed the explicit language of the tes-

tator, which limits the condition of the devise over to the death of his grandchildren under age and without any lawful issue. These two events must happen, as constituting the contingency on which the devise was to take effect. The language is so explicit, and the intention of the testator so obvious, that it would seem he could not have been mistaken. Is there any thing in any part of the will to control this language?

From the specific devises to his grandchildren and to their issue by the testator, his intention is inferred, in opposition to the language used, that on their death, at any time, without issue, the devise over was to take effect. This view is not sustained by the tenor of the will.

Several of the legacies to the grandchildren were money, to be paid when they became of full age. These, as well as the real estate, were devised over "on their death under age and without lawful issue." Now is this devise consistent with the supposition that it was to take effect at any future period, however remote, on the death of the grandchildren? They were to receive their legacies, and the real estate devised to them, when of age; and they had a right to use their property,
*274] and especially their pecuniary legacies, as their convenience might require. *The testator could not have intended to devise over property thus received and necessarily appropriated. He did not intend to withhold from these children, the objects of his regard and of his bounty, during their lives, the use of the property he gave them. The nature of this devise goes strongly to show that the testator intended it should take effect "on the death of the grandchildren before they became of age, having no lawful issue."

The judgment of the Circuit Court is affirmed.

Order.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Eastern District of Pennsylvania, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said Circuit Court in this cause be, and the same is hereby, affirmed, with costs.