

Barker, J.]

LEMIN v. LEMIN.

[Aug. 18.

Will—Codicil—Annuity payable out of legacy—Revocation—Lapse—Date of distribution.

Testator by his will gave to his trustees \$6,000 in trust to pay an annuity from the interest or corpus thereof of \$300 to his son R. during his life, and upon his death to pay it to R's. children P., S. and M. $\frac{1}{2}$, $\frac{1}{4}$ and $\frac{1}{4}$ of said principal, respectively. In a subsequent clause it was provided that in the case of the death of R. any or either of said children should be under the age of twenty-five years the trustees should pay to their mother while such children should be under that age an annuity of \$300 from said principal "to which such child or children will be entitled on the decease of their father" for the maintenance of such child or children respectively while he or she should be under that age. A codicil revoked the annuity to R. Testator was survived by R. and R's. children, all being under the age of twenty-five years at testator's death, but S. was now of that age.

Held, that the codicil did not revoke the gift to R's. children, that each child on attaining the age of twenty-five years was entitled to be paid his or her share, and that it was not the meaning of the will that the fund should be kept intact until the youngest of the children should attain that age.

Bowyer Smith, for trustees. *Skinner*, K.C. for father. *Earle*, K.C., for residuary legatees. *Pugsley*, A.G., for children.

Barker, J.]

MCLELLAN v. TURNER

[Aug. 18.

Injunction—Dissolution before hearing—Assessment of damages.

Where an ex parte injunction was dissolved before the hearing of the suit which was for a declaration of title to land, the Court postponed assessing damages upon plaintiff's undertaking given on obtaining the injunction, to the hearing of the suit.

Teed, K.C., for defendant. *Earle*, K.C., for plaintiff.

Barker, J.]

BURDEN v. HOWARD (No. 2.)

[Aug. 11.

Discovery—Affidavit—Copy of document.

Under 53 Vict., c. 4, s. 60, and Form 10, an affidavit of discovery should negative possession of copy of document.

Teed, K.C., for plaintiff. *Jordan*, K.C., for defendant.