

quite different from the present, and do not help very much in the construction of the present will.

There was no life estate given in the present will. The daughter Edith, had she lived, would have been entitled to the benefit of the whole, or so much thereof as might have been required for the purposes of the trust. In my opinion, it would be adding to the will and introducing something not only not contemplated by the testator, but contrary to his manifest intention, if I were to hold that, although the daughter predeceased him, and therefore this part of the will could not be carried out, yet that the clause evidences an intention to make a gift of the whole share to Father Whibbs in the event of her death.

In *In re Pinhorne*, *In re Powell*, and *In re Whitmore*, a life interest only was given to the deceased child, and in other respects the wills there under consideration differ materially from the present; and no general principle in any of the cases cited was enunciated which, so far as I can see, governs the present case. See the judgment of Stirling, L.J., in the *Whitmore* case, [1902] 2 Ch. at p. 70.

It was not, I think, an aliquot part of his estate which was disposed of by the will, but the share of the daughter Edith, and, as she never became entitled to any share, the contingency has never arisen upon which only could the gift in favour of Father Whibbs take effect.

In my opinion, the legacy lapsed. Costs of all parties out of the estate. Executor's costs as between solicitor and client.

JANUARY 26TH, 1909.

DIVISIONAL COURT.

FISHER v. INTERNATIONAL HARVESTER CO. OF CANADA.

Master and Servant — Injury to Servant — Negligence of Master — Unprecedented Occurrence — Duty to Guard against — Question for Jury — Evidence — Findings — Contract of Service—Obligatory Contract—Condition of Hiring—Validity of Contract—Payments Made to Injured Servant—Acceptance with Knowledge—R. S. O. 1897 ch. 160, sec. 10 — Consideration — Adequacy — Improvidence — Just and Reasonable Contract—Release—Bar to Action — Costs.

Appeal by plaintiff from judgment of RIDDELL, J., 12 O. W. R. 1126, dismissing the action.