which they received such vivid impressions in the course of the trial, made it impossible for them to give the respondent the benefit of the saving clause, sec. 172 of the Act.

The appeal must be dismissed with costs.

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MAY 18TH, 1903.

C. A.

## UFFNER v. LEWIS.

*Will—Legacies—Overpayment of Legatees under Judgment—Mistake—Repayment—Interest—Distribution.*

Appeal by plaintiffs the Uffners from an order of MOSS, C.J.O., sitting for a Judge of the High Court, upon an appeal from the report of the Master at Hamilton, in taking the accounts of the judgment directed by this Court, 27 A. R. 242. The main questions were, whether the basis of distribution should be per stirpes, as held by MOSS, C.J.O., or per capita, and whether the overpaid legatees were chargeable with interest on the amount directed to be repaid.

The appeal was heard by OSLER, MACLENNAN, GARROW, JJ.A.

D'Arcy Tate, Hamilton, for appellants.

F. W. Harcourt, for the infant children of Mary Evans.

J. V. Teetzel, K.C., and A. M. Lewis, Hamilton, for the Boys' Home.

G. F. Shepley, K.C., and W. Bell, Hamilton, for the executors.

OSLER, J.A.—I agree with the judgment of the Court below as to the principle of distribution. . . . The appeal was remarkably well argued, if I may say so, on both sides, and I have given the arguments presented by counsel the attention they deserve. I have also read the authorities, or all the important authorities, cited, and am satisfied that the result which has been arrived at as to the intention of the testator, ascertainable from the language he has employed—and it is his will which is to be construed, not those dealt with in other cases—is not in conflict with any rule or principle established by or deducible from those cases.