

kin of a supposed intestate. Subsequently a will was discovered and proved, and the executor applied on petition in the matter in which the money had been paid in, for payment out of the money so paid into Court. The Court granted the application on an affidavit being filed showing that the legacies bequeathed by the will to the infants had been paid.

SETTLEMENT — APPOINTMENT — CONSTRUCTION — REMOTENESS — CONTINGENT REMAINDER.

*Symes v. Symes*, (1896) 1 Ch. 272, was a special case stated for the purpose of obtaining a construction of a deed of appointment. The deed in question was executed in pursuance of a power contained in a marriage settlement of real estate executed in 1848, and was made by the husband and wife, and they thereby jointly appointed that the estate after the death of the survivor of them (they being tenants for life) should be to the use of the three children then born (naming them), of the only son of the marriage, and all other his child or children, who should be living at the death of the survivor of the appointors, and to the heirs and assigns of such of them as should attain 25, equally as tenants in common. But in case either of the three named children, and any such other child or children as aforesaid, should die under twenty-five, then immediately after his or her death, to the use of the survivor or survivors of them and their assigns, provided that, in case the appointment thereby intended to be made in favor of after born children of the son should from any cause fail of effect, the appointors declared that the appointment should operate as an appointment in favor of the three named children, or such of them as should attain twenty-five, their respective heirs and assigns. The husband died in 1867, and the wife in 1873. There were seven of the children living at her decease; the three elder ones, who were those named in the deed, had then attained twenty-five, and the other four subsequently attained that age. The question was whether the limitations of the deed of appointment were to be construed as creating a contingent remainder or an executory use. North, J., determined that they created a contingent remainder, and that the limitation of the fee in favor of the