

his real and personal estate to be divided equally between his brother and sisters, and "at the decease of either of my before-named brother or sisters, their interest herein to be equally divided amongst their children, and, after the decease of all, I desire the whole of my property . . . to be equally divided between the children of the aforesaid, share and share alike." The question was whether the ultimate gift to the nephews and nieces was *per stirpes* or *per capita*. Stirling, J., held it was *per stirpes*, but the Court of Appeal came to the conclusion that it was clearly a gift *per capita*, and could not be controlled by the fact that so long as any brother or sister lived the income was divisible *per stirpes*.

SETTLEMENT—VOLUNTARY DEED—RECTIFICATION.

In *Bonhote v. Henderson*, (1895) 2 Ch. 202, the Court of Appeal (Lindley, Lopes, and Kay, L.JJ.) have affirmed the decision of Kekewich, J., (1895) 1 Ch. 742; 13 R. July, 121, noted *ante* p. 377.) on the ground that the evidence failed to establish that at the time the settlement was made the settlors had any different intention from that carried out by the deed.

ADMINISTRATION—MARSHALLING ASSETS—REAL ESTATE CHARGED WITH DEBTS.

In *re Salt, Brothwood v. Keeling*, (1895) 2 Ch. 203; 13 R. June, 113, is a case which, since the Devolution of Estates Act, may not have very much bearing in Ontario. The question was as to the right of a legatee to have the assets marshalled in his favour. The testator, after directing payment of his debts and funeral and testamentary expenses, gave a legacy of £1,500 to his son, and devised and bequeathed all his real, and the residue of his personal estate, upon trusts for sale and investment, to pay the income to his wife for life, and after her death to divide the estate among his children. The personal estate was insufficient to pay the legacy in full after satisfying the debts, funeral, and testamentary expenses. Chitty, J., held that the legatee was entitled to have the assets marshalled so as to stand in the place of creditors against the real estate to the extent to which the personal estate had been applied in the payment of the debts, funeral, and testamentary expenses, and in doing so followed *Re Stokes*, 67 L.T. 223, in preference to *Re Bate*, 43 Ch. D. 600.