

survivor, or her heirs; putting it in the exact words of the will; "I direct and it is my will that in case any of my said daughters should die without leaving lawful issue the share of the person so dying shall go to the surviving daughter or her heirs."

The word "or" alone, of course, creates the difficulty, such as it is. If the testator meant that which he said, "*surviving*" daughter, then the word "and" must be substituted for the word "or." A devisee surviving must take; her issue could take only through her. If the testator did not mean "*surviving*," but really meant "*other*," and had said so, a very different question would have arisen, and there might be no doubt that effect should be given to the purchaser's contention that he ought not to have the title forced upon him before it was quieted, or the possible interests of unborn issue in some way bound by an adjudication in favour of the title.

But the word "*surviving*" cannot be rejected at the instance of the shorter and more frequently misused word "or". I have no reasonable doubt that, unless one of the devisees, having issue, survives the other devisee, who has died without issue, each holds an undivided moiety under the first clause in the will; so that, the one having conveyed to the other, and the other being the vendor, can, notwithstanding anything contained in the will, convey to the purchaser a good title to the land in question: see *In re Bowman*, 41 Ch. D. 525.

LENNOX, J.

JUNE 14TH, 1913.

#### RE PATERSON.

*Will—Construction—Interest in Business Carried on by Partnership—Valuation—Direction that Amount at which Interest Valued "Remain in Business" for Named Period—Appreciation at End of Period—Rights of Devisees and Legatees.*

Application by the widow of James L. Paterson, deceased, for an order, under Con. Rule 938, determining questions arising in the administration of the estate as to the proper construction of the will of the deceased.