

In dealing with the estate, the testator seemed to have provided two periods for distribution: the first 18 years from the date of the will, i.e., on the 30th January, 1895; the second, at the death of the widow, the annuitant, 13th June, 1916. It will be seen that Mary and Nancy died after the death of their father and before the first distribution.

Angelina Shaw died on the 10th December, 1905, leaving no children; and James W. Cleaver died after 1905, that being prior to the second distribution, leaving children.

The question now arising is: Who are entitled to share in the undistributed residue of the estate of the testator?

The learned Judge says that all the living children of the testator are entitled to share—so also are all the living grandchildren, who are children of the children of the testator. The gifts by the testator to the executors, for which the property of the testator was devised and bequeathed to his executors, vested at the time of the death of testator for the classes and persons named in the will. Realisation of the testator's assets was postponed.

As to all the estate, the distribution was postponed for 18 years from the date of the will. If the testator's widow was then alive, there was a further postponement as to part of the estate until her death.

If the view expressed as to the time of vesting is correct, that disposes of the argument for the exclusion of children who died after the death of the testator, and before the expiration of the 18 years, and also the argument against the children of the testator whose parents died after the 18 years and before the death of the annuitant.

Then as to grandchildren, children of children who predeceased the testator, the rule is that the will of the testator must be construed as if speaking at the death of testator: sec. 27 of the Wills Act, R.S.O. 1914 ch. 120. In this case, however, "a contrary intention appeared by the will." The will spoke from its date—not from the death. The testator then knew and desired to provide for all his large family of children, and also to provide that upon the death of his children, whenever that death might take place, the children should take the parent's share.

In re Hannam, [1897] 2 Ch. 39, distinguished.

In re Kirk (1916), 85 L.J. N.S. Ch. 182, followed.

Order declaring accordingly. Costs of all parties out of this residuary estate.