

Jennie Partridge who were to share in the residue took one share among them or took per capita.

The cases upon this were also quite clear and the will itself was free from difficulty. The residuary estate was to be divided "equally among" a class or body of persons described, "my brother," "my sister," "her daughter," &c. As soon as it appeared that any individual came within the class, that individual took an equal share. The division was on a basis of equality.

Order declaring accordingly; costs out of the estate.

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MIDDLETON, J.

APRIL 25TH, 1919.

RE TEMPLE.

*Will—Construction—Effect of Codicil—Change in Disposition of Residuary Estate—Gift of Residue Made Subject to Legacies and other Benefits.*

Motion by the executor and trustee under the will of Gertrude L. Temple, deceased, for an order determining certain questions with regard to the distribution of her estate, arising upon the terms of the will and a codicil thereto.

The motion was heard in the Weekly Court, Toronto.

W. Lawr, for the executor and trustee.

J. J. MacLennan, for Arthur Temple.

A. J. Anderson, for Cuthbert and Marion Temple.

J. J. Smith, for Ida Dunbar.

F. W. Harcourt, K.C., Official Guardian, for the infants.

MIDDLETON, J., in a written judgment, said that, by the will, after certain bequests of jewelry, the testatrix provided for two contingencies: "Should my father survive me" the residue goes to him "for his own use absolutely," "but in event of my father having predeceased me" then the residue goes to her half brother and cousin upon certain trusts—first to pay certain legacies, and the "remainder" to a brother and sister equally.

The codicil, prepared some years later, created some difficulty, but the learned Judge retained the view expressed upon the argument, that it substituted for the residuary provisions found in the will a gift of the residue to the testatrix's brother Arthur, subject to the father's right to live in the house during his life, but that this gift to Arthur was also subject to the legacies given by the codicil. The change in the residuary disposition, standing