

previous legatee survived, the effect of the failure of the earlier gift being to accelerate, and not destroy, the later gift. Applying these principles to the construction of the will in question, it was held that there was no lapse on the death of the first son of Flora before the death of the testator, and that the second son of Flora, although he would have taken nothing had his elder brother survived the testator, took the fund absolutely, subject to the contingency of Ellen having a son. It was also held that the gift to the second son of Flora was not void under the rule against perpetuities because, by the terms of the gift, the estate must vest, if at all, in the lifetime of a person living at the death of the testator; also, that the second son of Flora was entitled to the income which had accrued since the death of the tenant for life, because it appeared that Ellen was past child-bearing.

WILL.—CONSTRUCTION—PRECATORY TRUST—"I WISH THEM TO BEQUEATH THE SAME."

*In re Hamilton, Trench v. Hamilton*, (1895) 2 Ch. 370; 12 R. Aug. 49, the Court of Appeal has once more shown their intention of restricting the doctrine of precatory trusts within narrower limits than some of the older cases seemed to warrant. By the will in question the testator gave legacies to her two nieces, and added: "I wish them to bequeath the same equally between the families of S. Oliver and Mrs. Pakenham." The Court of Appeal (Lindley, Lopes, and Kay, L.JJ.), affirming Kekewich, J., held that the nieces took absolutely, and that there was no precatory trust in favour of the families of Oliver and Pakenham; and, in arriving at this conclusion, the court followed *In re Adams*, 27 Ch.D. 394, and *In re Diggles*, 39 Ch.D. 253, in preference to the earlier case of *Malim v. Keighley*, 2 Ves. 333, 529 (a). Lopes, L.J., says: "The current of decisions with regard to precatory trusts is now changed, and the result of the change is this, that the court will not allow a precatory trust to be raised unless, on the consideration of all of the words employed, it comes to the conclusion that it was the intention of the testator to create a trust."

UNDER-LEASE—COVENANT TO KEEP IN REPAIR—MEASURE OF DAMAGES.

*Ebbetts v. Conquest*, (1895) 2 Ch. 377; 12 R. Sept. 72, was an appeal from a referee to whom had been referred the assessment of damages payable for breach of a covenant by a lessee to keep the