

WILL—CODICIL—ANNUITY—REVOCATION BY CODICIL OF GIFT IN WILL—DECISION
AS TO INTERESTS OF UNBORN CHILDREN.

Re Frem's Contract, (1895) 2 Ch. 778, an appeal was had from the decision of Kekewich, J., (1895) 2 Ch. 256. The question was whether a codicil had had the effect of revoking a gift made by the will in favor of persons not expressly referred to in the codicil. By the will in question the testator gave to each of his grand-daughters, A. and B., an annuity of £300, and after their respective deaths he directed that the said sum of £300 should be raised and paid unto and amongst their respective children as they should respectively appoint, and in default of appointment, amongst them equally during their respective lives. By a codicil he recited that he had by his will given to each of his two grand-daughters an annuity of £300; and he revoked the gifts "of the said annuities," and in lieu thereof gave to each of them an annuity of £150, to be payable and charged in the same way as the annuities of £300 were by the will payable and charged. The children of A. and B. were not in any way referred to in the codicil, and the point at issue was whether or not the gifts in their favor contained in the will were also revoked by the codicil. Kekewich, J., decided that the effect of the codicil was to substitute the annuities of £150 to A. and B. and their respective children in lieu of the annuities of £300 given by the will, and this decision the majority of the Court of Appeal (Lindley and Lopes, L.J.J.,) affirmed, but Rigby, L.J., dissented, he thinking that the annuities of £300 in favor of the children after the deaths of A. and B., were unaffected by the codicil. It was objected that the question could not be decided, because there might be future born children who would be affected, but as there were some children *in esse* before the Court, and the rights of future born children would be identical with theirs, the Court felt no difficulty on that score in adjudicating the point. The majority of the Court considered it of importance in the construction of the will that the testator had in his will referred to the annuities to each grand-daughter and her children as one annuity and not several, thereby indicating an intention not to treat the annuities in favor of the children as distinct from those to the parents.