

male heir, and should there be two or more in equal degrees of consanguinity to me . . . then to convey the same unto the eldest of my male kindred" for life, "with remainder to the heirs of the body of my said eldest male relative." The testator bequeathed his residue to Herbert for life, and expressed a desire that he should not mortgage or anticipate the same, but assist the trustee in keeping the real estate in such repair as might be necessary for preserving its value, and keeping up the remainder in trust for "my nearest and eldest male relative" who should be such at the death of Herbert. The defendant was the heiress at law of the testator both at his death and at the death of Herbert. The nearest male relative of the testator at his death was the son of a female first cousin, and at the time of Herbert's death was the plaintiff, a son of a daughter of the same cousin. The majority of the Court of Appeal held that the person entitled in remainder must be ascertained at the testator's death in accordance with the established rule in favour of early vesting. Buckley, L.J., on the contrary, was of the opinion that "my nearest male heir" meant the testator's nearest male relative at the time of the death of Herbert. The House of Lords (Lords Loreburn, Atkinson, Shaw, and Moulton) hold that the words "nearest male heir" were not used in a technical sense as meaning the testator's heir being a male, but meant the testator's nearest male relative, and they agreed with Buckley, L.J., that the person to take in remainder was to be ascertained at the death of the tenant for life, and that the plaintiff's grandfather, being at that time the testator's nearest male relative, was entitled in remainder. The judgment of the Court of Appeal was therefore reversed. It was argued for the defendant that the words meant the "heir if a male," and, there being no such person, there was an intestacy, but this view failed to commend itself to their Lordships.

SOLICITOR AND CLIENT—CLAIM FOR INDEMNITY—MISREPRESENTATION—IMPROPER ADVICE—FRAUD—NEGLIGENCE—PLEADING—CAUSE OF ACTION.

*Nocton v. Ashburton* (1914) A.C. 932. This was an action brought by the plaintiff (Ashburton) against the defendant, who had acted as his solicitor, claiming indemnity for a loss occasioned by following the advice of the defendant in releasing certain property from a mortgage held by the plaintiff. The statement of claim charged misrepresentation and fraud. At the trial, Neville, J., found that the charge of fraud had not been made out, and, on that ground, dismissed the action. The Court of Appeal