

MEREDITH, J.

DECEMBER 24TH, 1902.

CHAMBERS.

RE BUTLER.

*Will—Construction—Distribution of Estate—Income—Corpus.*

Motion by executors upon an originating notice under Rule 938 for an order declaring the construction of the will of Peter Butler, by which all the residue of his property was devised upon trust to the executors to convert into money, and, after payment of an annuity, to pay the residue of the income annually in equal shares to his children Ephraim, Philip, George, Jane, Ann, and Sidney, during their lives. The will directed that the share of any of the said children dying without issue should be divided among "all my surviving children," and that the "share of interest of any of my children" who died leaving issue should be divided equally among the children of the deceased child until the final division. After the death of the last surviving of the six children mentioned by name, the corpus was directed to be divided into six parts and one part paid to the children of each of the said deceased children in equal shares. There was a seventh child of testator's not mentioned in the will except to be named as executor. He had died, leaving six children, and of the six children named as beneficiaries five were dead, four leaving issue, and one (Sidney) without issue.

W. E. Middleton, for the executors.

D. W. Saunders, for the assignees of George Butler.

D. L. McCarthy, for the representatives of Peter Butler.

F. W. Harcourt, for unborn children.

T. G. Meredith, K.C., for others interested.

MEREDITH, J.—The questions and the answers to them are as follows: 1. Are the children of Peter Butler entitled to share in Sidney's share of the income? They are so entitled. The will properly referred to the share of "any of the said children" being divided among all my surviving children, which prima facie included Peter, and this construction was assisted by the subsequent provision that the share of interest of "any of my children" (which again prima facie included Peter) dying leaving issue should until the period of distribution be divided among the children of that child. No violence was done to the words "share of interest" by holding them applicable not only to the main share of interest of one of the named six, but also to Peter's share of the share of one of the six dying without issue. To construe