Where, however, it clearly appears that the testator intended his heirs or next of kin at the death of the tenant, or legatee for life, such intent will prevail. *Horne* v. *Coleman*, 19 Eng. Law & Eq. 19; *Birden* v. *Hewlett*, 2 Mylne & Keen, 90; *Jones* v. *Colbeck*, 8 Vesey, 272; *Say* v. *Creed*, 5 Hare, 580; *Sears* v. *Russell*, 8 Gray, 86; *Minter* v. *Wraith*, 36 Eng. Ch. (13 Lim.) 52. But where a testator gives property to a tenant for life, and after the death of the tenant for life, to his next of kin, and there is nothing in the context to qualify, or in the circumstances of the case to exclude the natural meaning of the testator's words, the next of kin living at his death will take; and if the tenant for life be such next of kin, either solely, or jointly with other persons, he will not on that account only be excluded. *Say* v. *Creed*, 26 Eng. Ch. 580; *Elmsley* v. *Young*, 2 M. & K. 82; *Jenkins* v. *Gower*, 2 Coll. 537. Nor will the use of the word *then*, as introductory to the bequest or devise over after the death of the tenant or legatee for life, prevent the general rule from applying unless it is so used as to clearly indicate that the next of kin or heirs living at the death of the tenant for life are intended by the testator. *Holloway* v. *Holloway*; *Ware* v. *Rowland*, 2 Phillips, 630; *Wharton* v. *Barker*, 4 K. & Johnson, 483. We see nothing in this will, or in the circumstances of the case, which qualifies the natural meaning of the words, and which clearly shows that the testator intended to limit the estate to those who should be his right heirs at the death of his son William. Certainly the use of the word *then*, as introductory to the limitation, does not indicate any such intention. The limitation is in these words: And for want of such child or children, or lawful issue, then in trust for the use and behoof of my right heirs forever. Obviously the word *then* is not used in this clause as an adverb of time, but as a conjunction signifying, in that case, in that event, or contingency. If this be the meaning, there is nothing to prevent the general rule from applying, and the words must be construed as referring to the heirs of the testator at the time of his death. But the appellants rely upon the rule laid down by Redfield in his treatise on Wills, page 393. He says: The devise or bequest of property to the testator's heirs at law means those who were such at the time of his decease, unless a contrary intent is obvious. But where there are intervening estates, and the remainder is contingent, it will be construed as having reference to those who shall sustain the relation of heirs at the time the estate vests in possession. And in support of this doctrine he cites *Rich* v. *Waters*, 22 Pick. 563; *Sears* v. *Russell*, 8 Gray, 85; *Abbott* v. *Bond*, 4 Allen, 466; and *Abbott* v. *Bradstreet*, 3 Id. 587. Two of these cases, *Rich* v. *Waters*, and *Abbott* v. *Bond*, have no direct bearing on the subject. And the first is virtually overruled in *Abbott* v. *Bradstreet*. But the general rule is recognised in *Sears* v *Russell*, and strictly followed in *Abbott* v. *Bradstreet*, and neither of them suggest any such modification of the rule as that stated by Mr. Redfield.

In the latter case it was decided that a bequest of the remainder, after a life estate to the heirs at law of the testator, will be construed as referring to those who were such at the time of his decease, unless a different intent is plainly manifested; and such intent is not to be inferred from the fact that those to whom this life estate is given are among his heirs at law, or that a bequest is given to another heir at law "in full of any share she may be entitled to out of my estate." This conclusion is reached after an elaborate examination of the authorities, and there is nothing in the facts of the case, or in the opinion of the court, which lends any countenance or sanction to the dictum of the able and learned author. If then, as we have endeavored to show, the general rule of construction must prevail in this case, it follows that the testator's heirs at his death, and not his heirs at the death of the tenant for life, are entitled to the remainder.

This conclusion, though reached by a different process, is in substantial harmony with the decisions of this court, in Etter's Estate, 11 Harris, 381, and Reible's Appeal, 4 P. F. Smith, 97; in both of which there was a limitation over to the testator's heirs on the death of the tenant for life without leaving children, or issue surviving. In the former, it was held that the remainder vested in the heirs immediately on the death of the testator, and that the tenant for life was excluded by the express words of the will —"my surviving heirs hereinafter named;" in the latter, that the testator's heirs, who were living at his death, including the tenant for life, took the remainder under the limitation as an executory devisee. But whether the limitation over to the testator's heirs, in the event of the death of the tenant for life without children living, is regarded as an executory devise, or a contingent remainder, will not affect or vary the rule of construction, as it respects the heirs entitled to take. The limitation to the heirs must be construed to mean those who are such ta the testator's death, unless a different intent clearly appears. Whether, therefore, the remainder be regarded as contingent or vested, the heirs of the testator, who were living at his death, are entitled to it under the limitation.

The appeal is dismissed, and the decree of the Orphans' Court is affirmed, at the cost of the appellant.

SUPREME COURT OF PHILADELPHIA.

Hall v. Rulon.

(*From the Legal Gazette.*)

1. A contract not to carry on a particular business in a particular place is in restraint of trade, and although valid if made, its existence must be proven by clear and satisfactory evidence, and will not be inferred from the fact of the sale of the *good will* of a business.
2. After making such a sale, however, good faith requires that the vendor shall not hold himself out as *continuing* his former business, and he will be restrained from so doing.

Appeal from the decree of the Court of Common Pleas of Philadelphia County.

Opinion by Williams, J., July 6th, 1869.

We have no doubt of the validity of such a contract as is alleged in the bill, if founded on a sufficient consideration; or of the power of the court to restrain its breach by injunction. Our doubt in this case arises from the insufficiency