

MASTEN, J., in a written judgment, said that he had already determined that the remainders bequeathed to the brothers and sisters of the testator vested on the testator's death. This view was confirmed by *Re Ward* (1915), 33 O.L.R. 262, and *Re Bennett Trusts* (1857), 3 K. & J. 280.

Upon the question since argued, viz., whether the gift over to nephews and nieces was to be construed as if the will had read, "to my brothers and sisters and children of any who may have died prior to the period of distribution," or whether the reference was to the period of vesting, the learned Judge referred to Halsbury's Laws of England, vol. 28, p. 822, para. 1477; *Maddison v. Chapman* (1858), 4 K. & J. 709, 721; *Re Wood* (1881), 43 L.T.R. 730, 732; *In re Roberts*, [1903] 2 Ch. 200, 204; *In re Firth*, [1914] 2 Ch. 386, 394.

As Lawrence, John, and Ellen were unmarried at the date of the will and died without children, the learned Judge thought that, by the words of the will directing a gift over "to the heirs of any brother or sister dying without children," the testator intended to divest their shares and make a direct gift of them to the heirs of Lawrence, John, and Ellen, respectively. But, in the case of the gift by the words, "children of any of said brothers or sisters as may have died . . . to receive the portion that would have been due their parent," the learned Judge thought that, as Bridget Gormley, a sister of the testator, had died in 1878, leaving children, and as the testator knew the facts when he made his will in 1884, the last-quoted words ought to be taken to refer to the Gormley family and to that of any other brother or sister who predeceased the testator leaving children; that the testator did not intend to deprive such of his brothers and sisters as died leaving children of their right to deal with their shares; and that the Court ought to lean against the divesting of the interests vested in those brothers and sisters who left children.

Order declaring that Eliza McNulty and Ann Allen had each the right to will the portion of the estate coming to her, and the share of Andrew Dardis passed as part of his estate.

Costs of all parties out of the estate.