

Bearing in mind that the shares lapsing or failing of effect spoken of are shares of the corpus, of the residuary estate, there can be no division of them "in the manner, shares, and proportions hereinbefore directed" between the remaining sons, for nothing out of the corpus has been given to any of the sons,—they take income only.

It would seem that this provision of the will declared to be intended to make the meaning of the testator more clear only obscures it.

The expression "remaining sons" does not, however, necessarily mean "surviving sons;" it may, and in this case, I think does mean—if it means anything—other sons surviving in person or in stirpes, that is to say, sons surviving in person or in stirpes, a son or sons dying without issue capable of taking under the earlier provisions of the will, and, so reading it, there is nothing in the language used to alter the effect of the earlier part of the provision.

"Remaining" is not, I think, so strong an expression pointing to survivorship as "surviving," and yet had the latter been the word used by the testator, there is ample authority for holding in such a case as this that it ought to be read as "other surviving in person or in stirpes." *Lucena v. Lucena*, 7 Ch. D. 255; *Re Bilham*, [1901] 2 Ch. 169; and, though involving an idea of a survivorship, means surviving in person or in stirpes. See, also, *O'Brien v. O'Brien*, [1896] 2 I. R. 459.

It is not without significance that the words "remaining" and "surviving" are both used in the provision of the will with which I am dealing. Where the testator means "surviving in person" he uses the word "surviving." I refer to the provision as to surviving grandchildren, and it is not unreasonable to infer that if he had meant to convey the same idea when speaking of his sons he would have said "surviving" and not "remaining" sons.

As Osborne is still living, it is not proper to express an opinion as to the destination of the share intended for his children or their issue, if it should happen that there is no issue of his capable of taking.

The result is that, in my opinion, the appeal should be allowed and the order of the Chief Justice should be discharged, and in lieu of it an order should be made declaring that upon the true construction of the will, in the events that