

RE VAN EVERY—RIDDELL, J.—OCT. 8.

*Will—Construction—Devise—Life Estate — Remainders — Brothers and Sisters Living at Death of Testator—Brothers and Sisters Born afterwards.*.]—The late James Van Every made his will on the 4th June, 1904, whereby he left all his property in trust for his wife for life, after her death to Chester Smith, and, should Chester Smith die before the widow, all was to be “equally divided between my brothers and sisters.” Van Every died; his widow and Chester Smith both survived; and he left brothers and sisters who all survived. By reason of some proposed dealings with the property, it was desired to know whether any others than the widow, Smith, and the brothers and sisters, had any interest in it; and an application was made for the opinion of the Court. RIDDELL, J., said that there was no need to go into the question, sometimes puzzling, as to when the estates in remainder vested and when the class was to be determined. The brothers and sisters now living were those living at the death of the testator; and the number could not be increased so as to bring in other brothers and sisters at the death of the widow or of Chester Smith. A conveyance by all the brothers and sisters would dispose of all the conditional remainder. The learned Judge did not see any room for doubt: but, as all parties joined in the application, costs should be out of the estate. W. M. McClemon, for the widow, Chester Smith, and the brothers and sisters. E. C. Cattnach, for the executors. F. W. Harcourt, K.C., for the infants.