

the residue of his estate should be divided *pro rata* among the legatees:—

*Held*, that it was the duty of the executors to deduct the succession duty payable in respect of the pecuniary legacies, before paying the amounts over to the legatees, and they had no right to pay such succession duty out of the residue left after paying the legacies in full.

Where the residue of an estate is directed to be divided *pro rata* among prior legatees they take such residue in proportion to the amount of their prior legacies. *Kennedy et al. v. Protestant Orphans' Home et al.*, 235.

3. *Devise—Charitable Bequest—Indefiniteness—Scheme.*—A testator by his will devised to certain named persons who were appointed the executors and trustees thereof, the remainder of his estate to be used to further “the cause of our Lord Jesus Christ”:—

*Held*, that the legacy was not void for indefiniteness, and discretion having been given to the executors and trustees, it was not necessary that a scheme should be directed. *Phelps v. Lord et al.*, 259.

4. *Codicil—Revocation of Bequest.*—A testatrix by the third clause of her will bequeathed to S., the interest on the sum of \$3,000 for life, and after his death directed the \$3,000 to be divided among his children, and by a subsequent clause she directed her executors to deduct out of the \$3,000 all payments made to S. after the date of the will. By a codicil she directed that the bequest number three, bequeathing to S. the interest on \$3,000 be revoked, and in lieu thereof the sum of \$500 be paid to him, or his heirs, and that

the direction as to payments made after the date of the will should apply thereto:—

*Held*, that the effect of the codicil was to revoke the whole of the third clause. *Edwards v. Findlay*, 489.

5. *Construction—“Right Heirs”—Period of Ascertainment—Distribution of Estate—“Equally”—Per Capita and not per Stirpes.*—Upon appeal from the Master's report on a reference for the administration of the estate of the testator whose will was construed in *Coatsworth v. Carson*, 24 O. R. 185:—

*Held*, having regard to the judgment in that case, that the “right heirs” were to be ascertained at the date of the death of the testator's daughter, and among them the whole of the estate was to be divided equally, share and share alike.

The expression “*per stirpes*” in the former judgment was improvidently used, due weight not having been given to the word “equally.” *Re Ferguson, Bennett v. Coatsworth*, 591.

6. *Devise—Conditional Fee—Executory Devise.*—A testator by his will devised as follows:—“I give and bequeath to my son F. \* \* lot No. \* \* at the age of twenty-one years, giving the executors power to lift the rent and to rent, said executors paying F. all former rents due after my decease up to his attaining the age of twenty-one years.

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“At the death of any one of my sons or daughters having no issue their property to be divided equally among the survivors.”

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