

tion to be avoided if it can be avoided without doing violence to the presumed intention of the testatrix and the language she employed. In other words where two constructions are possible, the Courts lean in favour of that which will make for an early vesting of the fund.

In the Encyclopædic Dictionary it is said that "in strict accuracy *between* is used only of two. When there are more than two the proper term to use is *among*." The Standard and other dictionaries may be referred to for statements to the same effect. But it was pointed out to me that the testatrix was not a person to be expected to select her words with nice discrimination, and a perusal of her will would confirm this view; although it is not to be overlooked that, when she is giving her jewellery to her nieces, of whom she appears to have had a good many, she says: "My jewellery to be divided *among* my nieces;" and as to her furniture, after her sister's death, it is to be divided "equally *among* her children." I do not know how many children there were. On the other hand, I have found no intrinsic evidence in the will that the testatrix uses the word *between* where the word *among* would be more apt to express what she manifestly intends.

In the construction of wills, authorities as a rule afford very little help. The word "between" was under consideration in *In re Harper, Plowman v. Harper*, [1914] 1 Ch. 70, but I have not been able to get any assistance from it. The case most like the one I am considering is *Hutchinson v. La Fortune* (1897), 28 O.R. 329, in which the testator directed that, after the death of his mother, his real estate should be sold, "and the proceeds equally divided between my wife and my brother and sister." It is not stated that any circumstance was shewn or that there was any statement elsewhere in the will assisting the construction of the language above-quoted. It was held that the wife took one-half and the brother and sister one-half between them. The language quoted is almost identically upon the lines of the paragraph I am asked to construe.

The assistance of this decision would not alone be enough. But I cannot think that the testatrix intended to benefit George Challoner Benson only after the death of both his uncles; and, upon the wording of the will, no part of the fund can vest until both these events happen, unless this beneficiary is to take one-half of it. I think it is not unreasonable to infer that George Challoner Benson, as regards this fund, was the chief object of her bounty. At the time she made her will he was about eleven