

MIDDLETON, J.

FEBRUARY 9TH, 1911.

RE LENZ.

*Will—Construction—Avoidance of Intestacy—Indication of Intention to Dispose of whole Estate—Residuary Estate—Division into Shares—Deduction of Insurance Moneys from Shares—Testacy or Intestacy as to Insurance Moneys.*

Motion by the executors of the will of C. F. Lenz, deceased, under Con. Rule 938, for an order declaring the true construction of the will.

- F. R. Martin, for the executors.
- E. D. Armour, K.C., for two sisters of the testator.
- I. F. Hellmuth, K.C., for the infant son of the testator.
- J. Bicknell, K.C., for the widow.

MIDDLETON, J.:—I accept as the principle governing me that well illustrated by *Scale v. Rawlins*, [1892] A.C. 342, that it is the duty of the Court to construe the words actually used by the testator, and not to speculate upon what peradventure may have been in the testator's mind. I must be able to ascertain from the will itself some adequate expression of the testator's intention. The will is required to be in writing, and by that which is written the parties must abide—if the testator has unfortunately failed to express his intention, I cannot supplement his written words; there cannot be a "reformation" of a will. At the same time it is clearly my duty to endeavour, if possible, to ascertain, from the words used, the intention of the testator, and to give effect to that intention, if it can be so ascertained.

It is said that the Court leans against intestacy, but that statement is often rashly made and without considering its necessary limitations. When there is in truth an intestacy, the Court must not invent a will merely because it may suspect that, if the events that have come to pass had been present to the testator's mind, he would have provided how his estate should then be dealt with. If he has not made provision for all contingencies, his silence involves intestacy. The warning of *Romer, J.*, in *In re Edwards*, [1906] 1 Ch. 574, against the undue extension of the rule, is salutary. With the view of avoiding intestacy, you are not to do otherwise than to construe plain words according to their plain meaning. When a man makes a will, he intends to die testate only so far as he has expressed himself in his will. When an intention is clearly