

WILL—CONSTRUCTION—GIFT TO A CLASS—GIFT OVER ON DEATH “WITHOUT LEAVING ISSUE.”

In re Schnadhorst, Sandkuh v. Schnadhorst (1902) 2 Ch. 234, the judgment of Joyce, J., (1801) 2 Ch. 338 (noted ante vol. 37, p. 776) was affirmed by the Court of Appeal (Collins, M.R., and Stirling and Cozens-Hardy, L.JJ.) The case arises on the construction of a will whereby the testator gave his residuary estate to his widow for life and on her death to apply the income in the maintenance and education of his children until the youngest who should be living, who being a son, should attain 21, or being a daughter, should attain 21, or marry, and subject thereto the trust fund was to be held in trust for all his sons attaining 21, and his daughters attaining 21, or marrying, in equal shares, and the testator directed that if any of his children should die leaving issue, such issue should take his or her deceased parent's share equally as tenants in common. The question was whether the children took defeasible or indefeasible estates. In other words, whether the gift over on their “dying without issue” took effect merely on their so dying before attaining 21, or marrying, or whether it took effect in case of their so dying at any time. Joyce, J., held that it took effect on their so dying at any time, and the Court of Appeal agreed with that view, and consequently that the children only took vested indefeasible interests if and when they should die without leaving issue, no matter when such death might happen.

VENDOR AND PURCHASER—PROPERTY PURCHASED FOR BUILDING—LATENT DEFECT—MISDESCRIPTION—UNDERGROUND CULVERT—CONDITION OF SALE.

In re Puckett & Smith (1902) 2 Ch. 258, land was offered for sale on the specific statement by the vendors that it was suitable for building purposes, whereas in fact it was materially unfitted therefor, owing to the existence of an underground culvert on the property unknown to the vendors. A condition of sale provided that “the property being open for inspection, the purchaser shall be deemed to buy with full knowledge of the actual qualities and condition thereof. If any error shall be proved in the particulars the same shall not annul the sale, nor shall any compensation be allowed in respect thereof.” The purchaser inspected the property before the sale, but failed to discover the culvert until after the contract had been entered into, and in the opinion of the Court no