

Trusts Corporation were on the 29th June, 1904, appointed administrators of her property.

The questions for decision were: (1) whether or not, in the events that happened, the gift over contained in the will of the testator took effect; (2) what share or interest in the land the applicant was entitled to.

G. H. Kilmer, K.C., for the applicant.

E. G. Long, for the other parties.

MEREDITH, C.J., held that the devise over was not dependent on the contingency of the widow marrying again, but took effect on the determination of her estate, whether by marriage or death: *Jarman on Wills*, 5th ed., p. 759; *Theobald on Wills*, Can. ed., pp. 567, 576-7; *Luxford v. Cheeke*, 3 Lev. 125; S. C., sub nom. *Brown v. Cutter*, 2 Shower 152, Sir T. Raymond 427; *Browne v. Hammond*, Johns. 210, 214; *Eaton v. Hewitt*, 2 Dr. & Sm. 184; *Wardroper v. Cutfield*, 10 L. T. N. S. 19; *Underhill v. Roden*, 2 Ch. D. 494; *In re Tredwell*, [1891] 2 Ch. 640; *Meeds v. Wood*, 19 Beav. 215; *Eastwood v. Lockwood*, L. R. 3 Eq. 487; *In re Martin*, 54 L. J. Ch. 107; *In re Dear*, 58 L. J. Ch. 650; *In re Cave*, 63 L. T. N. S. 746; *Burgess v. Burrows*, 21 C. P. 426. [*Pile v. Salter*, 5 Sim. 411, disapproved in *Underhill v. Roden*, *supra*, and not followed in *Scarborough v. Scarborough*, 68 L. T. N. S. 851, is inconsistent with the other cases, and should not be followed.]

It was argued by Mr. Kilmer that the rule ought not to be applied in the case at bar, because the devise to the widow is not, in terms, for life if she should so long continue a widow, but I do not agree with that contention. The effect of the devise is precisely the same as if it had been expressed to be for life if she should so long continue a widow: *In re Carne's Settled Estates*, [1899] 1 Ch. 324; *National Trust Co. v. Shore*, 16 O. L. R. 177.

There must be a declaration that the two daughters took under the will a vested remainder in the land, to take effect in possession upon the marriage or death of the wife.

Upon the death of the daughter Mary Johnson Branton intestate and without issue, her undivided one-half of the land became, under the provisions of the Devolution of Estates Act, distributable in like manner as personal property, and the applicant, though but a half brother, is entitled as one of her next of kin to share equally with the other next of kin, the surviving sister, and there will be a declaration accordingly.

Costs out of the estate.