

MABEE, J.

OCTOBER 22ND, 1906.

WEEKLY COURT.

RE FARRELL.

Will — Construction — Residuary Clause — Enumeration of Articles—Ejusdem Generis Rule—Construction to Include Subject of Lapsed Devise.

Motion by the executors of the will of Denis Farrell, deceased, for order declaring construction of will.

A. H. Clarke, K.C., for applicants.

F. W. Harcourt, for infants.

MABEE, J.:—One clause of the will of the testator is as follows: "I give, devise and bequeath all my real and personal estate, . . . in the manner following, etc. One of the clauses which followed provided that a sister should have certain lands owned by the testator, which devise has lapsed.

The last clause is as follows: "All the rest and residue of my estate, consisting of money, promissory note or notes, vehicles, and implements, I give and bequeath to my brother Andrew," etc.; and the Court is asked to say whether Andrew is entitled under the residuary clause to the lapsed devise.

Timewell v. Perkins, 2 Atk. 102, is an authority that general words will be cut down to articles ejusdem generis, not merely where the general words follow the articles, but when they precede it, provided it appears clearly that the enumeration of the articles is intended to be explanatory of the general words, and not merely to shew the extent of the gift. . . .

[Reference to Gower v. Davis, 29 Beav. 222; Mason v. Ogden, [1903] A. C. 1; King v. George, 4 Ch. D. 435, 5 Ch. D. 627.]

These cases follow the old case of Bridges v. Bridges, 8 Viner's Abr. 295.

Whether Timewell v. Perkins may be regarded as overruled or not, it certainly has not been followed in many of the later cases: Theobald, 5th ed., p. 205.