

MIDDLETON, J.,

NOVEMBER 17TH, 1914.

RE MINO AND ELLIS.

Will—Construction—Devise to Sons—Substitutional Devise to Issue of Sons—Possible Intestacy in Certain Events—Title to Land—Vendors and Purchasers Act.

Motion by William E. Mino, vendor, for an order, under the Vendors and Purchasers Act, declaring that objections to his title to certain land made by Edith E. Ellis, purchaser, were not valid objections.

M. W. McEwen, for the vendor.

M. F. Muir, K.C., for the purchaser.

J. R. Meredith, for the infants.

MIDDLETON, J.:—The title is derived through a conveyance by the daughter and two sons of the late Mary Ann Beer. By her will, the testatrix provided: "I give devise and bequeath all my estate real and personal . . . unto my daughter Margaret Winnifred Beer for her own use until her marriage or death whichever shall first occur. In the event of the marriage of my said daughter . . . then I give devise and bequeath one-third of my said estate real and personal unto my two sons John Walter Beer and William James Beer to be divided equally between them and in such event I give devise and bequeath the remaining two-thirds of my said estate unto my said daughter Margaret Winnifred Beer absolutely. In the event of the death of my said daughter unmarried then I give devise and bequeath all my estate real and personal to my two said sons . . . to be divided equally between them . . . after the death of my said daughter and if either of my said sons should predecease my said daughter leaving lawful issue then the portion of my said estate which would otherwise have gone to either of my said sons I bequeath to their issue."

After the best consideration I can give this clause, it seems plain that the gift to the issue of the sons is substitutional; and that, in the event of either son dying during the lifetime of the daughter leaving issue, such issue will take, not through the parent, but under the will.

I assume that the daughter is still unmarried, as, if she