

(1) Is Lorenzo Brown, husband of the late Amelia Brown, entitled to the legacy of \$400, and also to a share of the residue?

(2) Are the next of kin of Hannah Vining entitled to the legacy of \$800, and also to a share of the residue?

(3) Are the next of kin of Elizabeth Knapp entitled to a share of the residue?

W. R. Meredith, for Official Guardian, and Mrs. Mallory.

C. G. Jarvis, for surviving children.

J. Vining, for executors.

HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B.:—With regard to the legacies, I think that each of the legatees had a vested interest on the death of the testator, and not an interest conditional on surviving the tenant for life.

With regard to the residue, the children of Amelia Brown are clearly entitled to the share which would have gone to their mother, had she survived the tenant for life, and it seems also clear that the share of Hannah Vining, who died unmarried, lapses and is divisible among the others entitled.

There is more difficulty in regard to Elizabeth Knapp, but I think the authorities compel me to hold that as she died before the date of the will, she could not be capable of taking under it, and although she left children living at the time of the death of the life tenant, these could not take in substitution for her.

*Christopherson v. Naylor* (1816), 1 Mer. 320; *Butter v. Ommamey*, 1827, 4 Russ. 73; *Re Websters Estate*, 1883, 23 Ch. D. 737; *Re Musther*, 1890, 43 Ch. D. 569.

I think the questions should be answered as follows:—

(1) Alonzo Brown, as husband and as assignee of his children's share, is entitled to the legacy of \$400 and to the share of the residue to which Amelia Brown would have been entitled had she survived the tenant for life.

(2) Hannah Vining's estate is entitled to the legacy of \$800, but not to any share in the residue.

(3) Elizabeth Knapp's estate has no interest under the will.

Costs to all parties out of the estate.