

and under exactly the same conditions, and having this equality in view one would scarcely expect to find that when providing for the case of any of these provisions failing to take effect the testator would wittingly have made it possible that children of two of his sons should in any event take each but one-fourth of his residuary estate, and the children of a third son one-half of it, and yet that is the result reached by the judgment appealed from.

If the language which the testator has used bears that meaning, effect must of course be given to it, but before adopting such a construction, it is, I think, the duty of the Court to endeavour to find, if without disregarding or doing violence to any of the provisions of the will that may be done, a meaning which accords better with the general scheme which the testator had in mind.

The only difficulty is created by the expression "remaining sons and their issue" which the testator uses; but, taking the provision of which it forms part as a whole, that difficulty is not, I think, insurmountable.

The lapsed legacies or undisposed of shares are "to be payable and divisible as near as the then existing circumstances will permit in like manner as hereinbefore directed with respect to such residuary estate." In the events that have happened the undisposed of share is the one-fourth of the residuary estate which upon Henry's death would have been divisible between his children and their issue, if he had left any entitled to take. Then what is the manner in which the residuary estate has in the former part of the will been directed to be payable and divisible? It is by a division into equal shares between the families of the 4 sons; it is true that it is one-fourth to each family as the respective heads die, and it is not unlikely that, observing this, the testator used the words "as near as the then existing circumstances will permit" to indicate that there was to be the same equality as prevailed under the original provision, and that the shares were not to be one-fourths.

Had the provision stopped at this point, this would, I think, have been reasonably clear.

Then does what follows make it necessary to give a different meaning to the whole of the provision? As I have said, the difficulty is created by the use of the words "my remaining sons and their issue."