

cise as practical men having regard to the circumstances of the case, such as the position and solvency of the mortgagor, and an inquiry was directed as to what should be done. North, J., was of opinion that he had no jurisdiction to award costs out of the trust estate, as all the beneficiaries were not parties to the application. On appeal, however, the Court of Appeal (Lord Esher, M.R., Cotton, and Fry, L.J.J.) held that the learned judge had jurisdiction to order payment of costs out of the estate and might direct any of the beneficiaries not before the Court to be notified as he should see fit, and the order of North, J., was therefore varied by reserving the costs until after the inquiry directed had been concluded.

WILL.—CONSTRUCTION —“ SURVIVING ”—GIFT TO TENANTS FOR LIFE AND THEIR CHILDREN.—GIFT OVER TO SURVIVING TENANTS FOR LIFE AND THEIR CHILDREN.

*In re Bowman, Whitehead v. Boulton*, 41 Chy.D., 525, Kay, J., was called upon to place a construction on the will of testatrix which bequeathed £8,000 to a trustee upon trust to invest and pay the income equally amongst the testatrix's four nieces during their respective lives; and after the decease of any of them to pay the principal of her share to her children as she should appoint, and in default of appointment, to them equally; the shares of sons to be vested at 21 and of daughters at 21 or marriage, with benefit of survivorship among them as to the original and accruing shares of any who should die before attaining a vested interest, and in case of any of her nieces dying without having had any children who should have attained a vested interest, she gave the share of such niece and the interest thereof upon trust, “to pay and dispose thereof to or among her (the niece's) surviving sisters and their respective children in the same manner as I have hereinbefore directed respecting their original shares,” and she gave her residuary personal estate to her nephew. The four nieces survived the testatrix. One of them died, leaving children, and two others subsequently died without issue. The question was, whether the children of the niece who first died were entitled to participate in the shares of the nieces who subsequently died? Kay, J., answered this in the affirmative, holding that the scheme of the will indicated that it was the intention of the will to make a disposition *per stirpes*.

WASTE, PERMISSIVE.—TENANT FOR LIFE AND REMAINDERMAN.—RIGHTS AND LIABILITIES OF.

It is somewhat curious to find at this late date that *In re Cartwright, Avis v. Newnan*, 41 Chy.D. 532, an attempt should be made for the first time to make the estate of a legal tenant for life, upon whom no duty to repair was imposed, liable for permissive waste at the suit of the remainderman. Kay, J., held that the claim being entirely without precedent must be disallowed.

PRACTICE.—MORTGAGOR AND MORTGAGEE.—COSTS.—INTEREST ON COSTS WHEN ALLOWED.

*In Eardley v. Knight*, 41 Chy.D. 537, a point of practice was determined as regards mortgage actions, by Kay, J. An action brought by a mortgagor