

After very careful consideration I have concluded that they do not. Subject to the two considerations yet to be mentioned the case is clear. Where the testator speaks of his "brothers and sisters" unless there is something in the context to indicate otherwise, he is speaking of brothers and sisters then alive. See *Re Fleming*, 7 O. L. R. 651. And when this expression is varied by the words "and their children" these words are clearly confined to the children of brothers and sisters then living.

Against this it is urged in this case that the testator in the will has spoken of his nieces as "daughters of my brother John." I do not think that this shews a contrary intention or an intention that they should share.

Much more formidable is the difficulty arising from the fact that the testator had only one sister who survived him, and yet he uses the plural "sisters." I do not think that this is sufficient to indicate an intention to give anything to the sister already dead. Unless this is so, the children of that sister cannot take under the will.

Had the direction in the will been to divide the residue between "children of my brothers and sisters," then I think there would have been sufficient to indicate that the children of the dead brother and sister should be included. But I cannot read the will as being equivalent to this. The controlling words are the earlier words of the clause. The division is to be between the brothers and sisters, i.e., those living, and their children.

I am not asked to determine how the fund should be divided between the brothers and sisters and their children. The parties it is said can agree to that, they are all adults.

Costs may come out of the estate.

HON. MR. JUSTICE LENNOX.

NOVEMBER 27TH, 1913.

WEBSTER v. HENDERSON.

5 O. W. N. 373.

Fraud and Misrepresentation—Sale of Farm—Damages.

LENNOX, J., awarded plaintiff \$950 damages for fraud and misrepresentation whereby he was induced to purchase defendant's farm.

Action to recover \$2,000 damages for false and fraudulent misrepresentations whereby, as the plaintiff alleged, he was induced to purchase the defendant's farm.