

of the residuary estate, into Court—the interest thereon to be paid out half-yearly to Roy Dixon and S. A. S., in proper proportions.

S. A. S. died on the 19th August, 1909.

The applicant asked that the whole of the money in Court should be paid out to the members of the Marr family.

G. G. Plaxton, for the applicant.

W. H. Irving, for other members of the family.

J. E. Jones, for Roy Dixon.

RIDDELL, J.:—I was asked to allow evidence to be given that Roy Dixon was entirely dependent upon the fund, and that he was peculiarly the object of the bounty of the testatrix. I refused the evidence, as I think the will should be interpreted by itself.

The whole question will depend upon the meaning to be given to the words “the principal of this money.”

It will be seen that the gift to each of the two legatees is not an aliquot part of the interest upon the whole of the residuary estate, but the whole of the interest upon an aliquot part of the estate: e.g., Roy Dixon does not get two-thirds of the interest upon the residuary estate, but the interest upon two-thirds of this estate. There are, that is, two principals formed and not one.

I think, therefore, that the testatrix, in speaking of the principal at the death of either of them, is referring to the principal upon which during life the defunct drew interest—so that, in the event which has happened, the principal to the interest of which S. A. S. had been entitled, viz., one-third of the residue only, has been released, and is to be divided—the remaining principal (not properly speaking being the remainder of a principal, but a different one, and that remaining after the destruction by distribution of the other) still goes on to produce interest for Roy Dixon.

I do not find any case which binds me to hold the contrary, and none has been cited.

A second question arises, i.e., whether the division is to be per capita or per stirpes. It seems that the latter is the correct method: Jarman on Wills, 4th ed., p. 96; Theobald, Can. ed., p. 326, 563 (a); Hawkins, 2nd ed., p. 123; Coatsworth v. Carson, 24 O. R. 185.

The order will go accordingly.

Costs of all parties out of the fund ordered to be paid out, leaving that of Roy Dixon intact.