

death of either of the said children of the said Vincent F. Farrell before having received his or her share of the said principal sum or money and without issue him or her surviving the said share shall not go back to my estate but shall be paid in equal shares to his brothers and sisters the children of any deceased brother or sister to take their parent's share: provided that in the event of all of said children of said Vincent F. Farrell dying without issue the principal sum or money from which said annual payment of \$800 was derived shall revert to my estate and become part of the residue thereof."

The 23rd paragraph of the will was:—

"It is my will also that the said Vincent F. Farrell shall have no interest in my estate nor shall he in the event of the death of any of his children prior to his decease claim any share or interest of theirs in my estate."

The motion was heard in the Weekly Court, Toronto.
Glyn Osler, for the trustees.

LENNOX, J., in a written judgment, after setting out the facts and discussing the terms of the will, said that he was of opinion:—

(1) That a third part of the trust fund from which the income was derived vested in Eva Farrell when she attained the age of 21, subject, by reason of the express provisions of the will, to being divested in case she subsequently died before payment and without issue, as she did: *Gartshore v. Chalie* (1804), 10 Ves. 1, 13; *Lucas v. Carline* (1840), 2 Beav. 367; *Sidney v. Vaughan* (1721), 2 Bro. P.C. 254; *Jackson v. Jackson* (1749), 1 Ves. Sr. 217.

(2) That upon the death of Eva Farrell her surviving brother and sister became entitled to this share in equal proportions and that they were now each entitled to payment of half of the total trust fund from which the income was derived, according to the express terms of para. 6.

(3) That payment over of the trust fund was not, by the terms of para. 6, postponed until after the death of Vincent F. Farrell; but, even if this was not the proper interpretation of the testator's intention, the surviving children were entitled to immediate payment: *Magrath v. Morehead* (1871), L.R. 12 Eq. 491; *Rocke v. Rocke* (1845), 9 Beav. 66; *Curtis v. Lukin* (1842), 5 Beav. 147; *Josselyn v. Josselyn* (1837), 9 Sim. 63; and *Saunders v. Vautier* (1841), 4 Beav. 115.

Order declaring accordingly.