C. C. 497; Mower v. Orr, 7 Hare, 475.

Robertson Macdonald, G. W. Brabant, J. Gatey, M. L. Romer, J. G. Butcher, T. T. Methold, and Gilbart Smith for the various parties.

North, J., having decided that the word "previously" meant "previously to the decease of my said wife," held that, as there was no gift of the whole of the intermediate income in any event to the use of the legatee, but only of so much as the trustees thought fit to apply for maintenance, the direction for maintenance did not vest the contingent legacy. Fox v. Fox was too wide. As to conversion, there was a clear option in the trustees to sell or not. As there was a power of sale expressly given, it was unnecessary to imply a trust for sale, as in Mower v. Orr, where the direction to pay and divide was unaccompanied by any power to sell.

* * *

IN RE GRAY, AKERS v. SEARS.

[North, J., July 19.—Chancery Division.

Settlement — Construction — Who take — Next-of-kin — Statute of distribution.

The ultimate trust of the marriage settlement of Mary Ann Gray provided as follows, after the usual trusts for children:—

"But in case there shall be no child of the said intended marriage, or no child who shall live to attain a vested interest, then upon trust as to the said annuities and dividends for the person and persons who shall be next-of-kin in blood to the said Mary Ann Gray at the time of her decease, in case she had so died intestate and unmarried."

There was a previous gift of furniture "to the next-of-kin in blood....in the manner directed by the statute for the distribution of intestates' effects as if she had died intestate and unmarried."

Mary Ann Gray died without children, leaving brothers and sisters of the whole blood and half blood and children of deceased brothers and sisters.

The trustees took out a summons to determine who was entitled.

Henry Terrell, for the trustees, one of whom was the child of a deceased sister, contended that the reference to intestacy imported the Statute of Distributions.

I. Badcock, for a living brother, contended that "next-of-kin" must be construed strictly.

A. R. Ingpen for one of half blood.

It was admitted that the whole and half blood had equal rights.

North, J., said that the point was reasonably clear. The word "so" referred to the failure of children. There was a sufficient reference to the statute within Withy v. Mangles, 10 Cl. & F. 215; Garrick v. Lord Camden, 14 Ves. 372; and Smith v. Campbell, 19 Ves. 400. The omission of the words "to be divided among" made no difference. "Next-of-kin in blood" was the same as "next of-kin" (Halton v. Foster, L. R. 3 Chanc. 505). The gift of furniture showed that the words "next-of-kin blood" did not exclude the statute. He could not imagine why any reference to intestacy was made if the statute was not intended. A gift to next-of-kin simpliciter was the same whether the propositus was testate or intestate. Therefore the word "intestate" must import the statute. Whether the direction was to "divide" or "hold on trust for" made no difference, as could be tested by applying it to the case