

E. Coatsworth, K.C., for the executors.

J. R. Meredith, for the infant children of Catharine A. Rocque.

R. Nesbitt, for the adult children.

MIDDLETON, J.:—By her will, dated the 12th August, 1911, the testatrix, who died on the 31st December, 1913, gave \$1,000 to be divided between the children of her daughter Catharine, reciting that she had already given \$1,000 to her said daughter. After making certain other provisions for other children, she provided that the residue of her estate be divided into four equal parts: between her executor (a grandson) and her said three children. The "said three children" are her two sons and her daughter Catharine.

Catharine had died on the 7th March, 1906, more than five years before the making of the will. The conveyancer had evidently failed to apprehend the situation, and in some way was at cross purposes with the testatrix.

It appears to me that I must take the will as it reads, and that I am not at liberty to guess what the testatrix would have done if her attention had been drawn to the matter. It may be that the testatrix did not intend to give to the children of Catharine more than \$1,000, and that she intended that the residue should be divided equally between the executor and her sons, and that the error is in the enumeration; or it may be that she intended to direct that the share which would have come to Catharine if she had been alive should be divided among her children. The will gives no key, and I must take it as it stands. The executor and the sons are each given a fourth of the residue. The gift to Catharine cannot take effect, because she was then dead. There is no gift to Catharine's children; therefore, there is an intestacy as to this fourth.

The costs of all parties may come out of the estate.

MIDDLETON, J.

MARCH 7TH, 1914.

RE DORAN.

*Will—Construction—Devise—Life Estate—Vested Remainder—
Death of Remainderman—Direction for Conversion—Right
of Heirs to Take in Specie.*

Motion to determine certain questions arising on the will of John Doran, deceased.