

when they have indicated the meaning intended by the testator to be given to the word "heirs" in the preceding sentence. That word is to be construed to mean "issue;" so is the word "heirs" in the sentence "should no heirs:" but the words "next in heirship" are to be construed as meaning the heirs at law to the realty and the statutory next of kin to the personalty: *Keay v. Boulton*, 25 Ch. D. 213. The heirs or next of kin in each case are to be ascertained at the death of the person whose vested share they take.

FEBRUARY 26TH, 1902.

DIVISIONAL COURT.

EVANS v. JAFFRAY.

Discovery—Affidavit of Documents—Materiality of Documents—Examination of Parties—Scope of—Consequential Discovery—Discretion—Contents of Documents—Recollection—Costs of Lengthy Examination.

An appeal by the plaintiff from the order of MEREDITH, C. J., *ante* 29.

The plaintiff alleged a contract of partnership between him and the defendant J., for the promotion of a company to purchase certain bicycle plants, and to carry on a bicycle manufacturing business, etc., and that the defendants R. and C. had maliciously caused a breach of the partnership contract; and the plaintiff claimed a partnership account, and damages for such breach and for conspiracy.

It appeared from the examination for discovery of the defendant R., that he obtained written agreements from various companies, either in his own name, or in the names of himself and the defendant C., or in the names of other persons; that these agreements, or some of them, were afterwards assigned to a company which was then incorporated (not a party to this action). The plaintiff alleged that these agreements were, in fraud of his rights, substituted, with variations, for certain agreements previously entered into between the same companies and the defendant J., who was alleged to be the plaintiff's partner in the transactions. The plaintiff also alleged that the defendants R. and C. paid \$20,000 to the defendant J. to induce him to act with them, instead of with the plaintiff, in completing the purchase of the agreements; and it appeared from R.'s examination that