

HON. SIR G. FALCONBRIDGE, C.J.K.B. JUNE 24TH, 1913.

RE VINING ESTATE.

4 O. W. N. 1553.

Will—Construction—Postponed Gift—Vesting—Lapse—Member of Class Dying before Date of Will—No Gift to.

FALCONBRIDGE, C.J.K.B., *held*, that under a gift to all the testator's sons and daughters equally, the children of a daughter who had died prior to the date of the will did not take.
Christopherson v. Naylor, 1 Mer. 320, followed.

Motion for construction of the will of Alonzo Vining, who died on the 23rd May, 1895, leaving a will dated 21st September, 1894.

By paragraph three, testator devised the income of all his property both real and personal to his wife for life.

By paragraph four, he directed that after the decease of his wife all his property was to be converted, and out of the proceeds he bequeathed the following legacies amongst others:—

To his daughter, Amelia Brown, \$400; to his daughter, Hannah Vining, \$800.

By paragraph five, he directed "that all the rest and residue of my estate both real and personal that I shall own after the payment of the legacies" should be divided between all his sons and daughters equally, and should any of his sons and daughters be dead, he directed that the share of one so dying be divided equally between his or her children. The widow died 26th January, 1913.

Amelia Brown died intestate 21st January, 1913, leaving her surviving her husband and several children, who have assigned their interest to their father.

Hannah Vining died, unmarried, and intestate, 18th January, 1899.

Elizabeth Knapp died a widow and intestate, in 1892, leaving her surviving several children and children (infants) of a deceased child.

The questions for determination in the events which have happened are:—