struction of the following clause of the will: "Fifthly, I will devise and bequeath that at my said wife's death or within two years thereafter my said real estate be sold by my executors surviving her and the proceeds of said sales be divided by my executors and paid by them to my brothers and sisters and children of any of said brothers or sisters as may have died, said children to receive portion that would have been due their parent or heirs of any brother or sister dying without children, hereby giving power to my said executors to convey any property so sold."

Thomas Dardis died in 1884, leaving him surviving three brothers and three sisters, and the five children of his sister Bridget Gormley, who predeceased him. His widow, to whom he gave a life estate in the lands of which he died seized, died in January, 1916—being predeceased by all the brothers and sisters of the testator. Ellen Dardis, one of the sisters, died without children, and willed her share of the estate to her Gormley nieces.

The motion was heard in the Weekly Court at Toronto.

I. Hilliard, K.C., for the administrators.

Arthur Flynn, for T. L. Dardis, Elizabeth Allen, and others.

G. W. Mason, for Agnes Gormley and others.

E. C. Cattanach, for Francis and Harry McNulty, infants.

Grayson Smith, for R. J. Slattery.

J. G. Harkness, for R. J. Dillon.

R. F. Lyle, for the children of James Allen, a deceased nephew.

MASTEN, J., in a written judgment, said that the intention of the testator was that after his wife's death the proceeds of his land should go to the Dardis family. The words "or heirs of any brother or sister dying without children" provided for the cases of his two unmarried brothers and one unmarried sister—their shares, if they died childless, were yet to remain in the family. There was nothing in the will to shew any intention to prefer one family of nephews and nieces to another or to exclude the Gormleys from the benefits of the clause. The Gormleys were entitled to share, and were in the same position as would have been the children of any brother or sister who might have died between the date of the will and the testator's death.

The will came within the class of cases illustrated by Loring v. Thomas (1861), 1 Dr. & Sm. 497, and other cases, the latest of which is In re Kirk (1915), 85 L.J. Ch. 182; and not within the line of cases beginning with Christopherson v. Naylor (1816), 1 Mer. 320.

As all the alternative gifts are declared and embraced in one