

HON. MR. JUSTICE BRITTON:—The contest here is between the sisters Eliza Blackwood and Catharine Lillian Warner—formerly Catharine Lillian Froom, as to the true meaning of the 2nd clause of said will. It is contended on behalf of the applicant Eliza Blackwood that survivorship mentioned had reference to the testator—and as both the mother and sister survived the testator—they took as tenants in common. The rule as laid down in Theobald on Wills, 4th ed., p. 554, seems correct as deducible from the authorities.

“Survivorship is to be referred to the period of division. If there is no previous interest given in the legacy, then the period of division is the death of the testator—and the survivors at his death will take the whole legacy. But, if a previous life estate be given, then, the period of division is the death of the tenant for life, and the survivors at such death will take the whole legacy.

The same rule applies to realty as to personalty.”

See cases cited by Theobald.

Here no life estate was given. It was a direct gift to the two—the mother and sister or the survivor. They both survived the testator—they both took it all, as tenants in common. Some of the cases cited on the argument and relied upon for Mrs. Warner are outside of this rule. In *Peebles v. Kyle*, 4 Grant 334. there was a devise to wife of testator for life, with remainder to A. B. and C. or survivors or survivor of them. Survivorship there meant survivors at the death of the tenant for life—and not of the testator.

In *Smith v. Coleman*, 22 Grant 506, there was a devise to the wife for life.

There will be a declaration that the survivorship mentioned in the will of John Roger Johnson was referable to the death of the testator, and upon the testator's death, Margaret J. Johnson, and Catharine Lillian Froom took as tenants in common.

There will be no order as to costs.