The judgment of the Court (MEREDITH, C.J., MACMAHON, J., ANGLIN, J.), was delivered by

MEREDITH, C.J.:—The testator died on 3rd April, 1877, and left surviving him 4 sons, Warren, Henry, Norman, and Osborne. Warren died on 30th December, 1899, leaving 4 children surviving him, all of whom have attained their majority. Norman died on 23rd February, 1899, leaving 2 children surviving him, both of whom have attained their majority. Henry died on 8th February, 1906, without issue. Osborne is still living, and has two children, both of whom have attained their majority.

The testator devised and bequeathed all his property, real and personal, to his executors and trustees upon trust, after payment of his debts, funeral and testamentary expenses, and the expenses of registering his will, and a legacy of $1,500 to each of his four sons, to pay and divide the net annual income of his "residuary estate" between and among his 4 sons, in equal shares during their respective natural lives.

After making these dispositions, provision is made for the disposition of the corpus of the residuary estate in the following words:—

"And on the death of any one of my said 4 sons and on the death of each of them to pay and divide the principal or corpus of one-fourth part of my said residuary estate equally between and among such of the children of the said deceased son as shall attain the age of 21 years, or die under that age leaving lawful issue, the issue of any such deceased child to take the share the parent would have taken if living, and if more than one as tenants in common, but in case any of my said sons so dying shall have only one child who shall attain the age of 21 years or die under that age leaving lawful issue, then I direct that my said trustees shall pay and divide only the one-half part of the said one-fourth part to or among such child or issue."

It is manifest that had the will contained no other disposition providing for the event of there being no child or issue of any deceased child of one or more of the sons entitled to take under the provision of the will which I have just quoted, that part of the corpus which was bequeathed to the children or their issue of these sons would have been undisposed of and would have passed to the next of kin of the testator.