

MEREDITH, J.

FEBRUARY 3RD, 1903.

CHAMBERS.

RE McNICHOL.

*Will—Construction—Life Estate—Remainder—Vested Interests of Remaindermen—Representatives of Remaindermen Dying before Period of Distribution.*

Application by the executors of the will of John McNichol under Rule 938 for an order ascertaining the class of legatees amongst whom is to be divided the moiety of proceeds of the sale of the farm of the testator first referred to in the following extract from his will: "In the event of my daughter dying without heirs of her own body, and after the death of both her and her mother, my wife, the farm to be sold, and the proceeds divided, one equal half to be divided among my brothers and sisters, and the other equal half to be willed to whomsoever my beloved wife pleaseth to bequeath it."

The testator died on the 14th November, 1870; his daughter died 10th December, 1888, without heirs of her body, not having been married; and the testator's widow died on the 4th September, 1902.

Seven of the brothers and sisters of the testator survived him, but three of them died before the widow.

W. L. Walsh, Orangeville, for the executors.

W. E. Middleton, for the representatives of Benson McNichol, a deceased brother of the testator, cited *Re Harman*, [1897] 2 Ch. 39.

F. W. Harcourt, for the infants, referred to *Jarman on Wills*, 5th ed., pp. 1010-11; *Theobald on Wills*, 5th ed., p. 277.

MEREDITH, J.—The gift is, in effect, in the events which have happened, to the daughter for life, with remainder, as to the proceeds of one-half of the farm, to the brothers and sisters.

The brothers and sisters living at the testator's death took vested interests, and each became entitled to an equal share in such proceeds, together with other brothers or sister (if any) born before the period of distribution. The estate of any of such brothers or sisters as have died since the testator, is entitled to the deceased's share: see *Stanley v. Wise*, 2 Camp. 482, and *Baldwin v. Rogers*, 3 DeG. M. & G. 649.

If any conclusion adverse to the persons who are interested and have not been served with notice of this motion had been reached, no order would have been made without notice to at least some of them.

Order accordingly. Costs out of the fund.