

NOVEMBER 14TH, 1904.

C.A.

OSTERHOUT v. OSTERHOUT.

*Will—Construction—Bequest of Personality—"Reversion"—
Gift over—Absolute Interest.*

Appeal by defendant from judgment of a Divisional Court (3 O. W. R. 249, 7 O. L. R. 402), reversing judgment of MACMAHON, J. (2 O. W. R. 842), in an action for the construction of the will of Wilfred E. Osterhout. The testator gave to his father (the defendant) one-half of his ready money and of all his estate, "with reversion" to his brother (the plaintiff) on the decease of his father, and the other half to his brother. The portion of the estate in question consisted of \$7,000 deposited in a bank. The Court below held that the father was entitled for his life only to the use of one-half of the money, and that, subject to the life interest of the father, the brother took the same absolutely.

W. E. Middleton and C. H. Widdifield, Picton, for appellant.

G. Kerr and Joseph Montgomery, for plaintiff.

The judgment of the Court (MOSS, C.J.O., OSLER, MACLENNAN, GARROW, MACLAREN, JJ.A.), was delivered by

MACLENNAN, J.A.— . . . It has often been remarked that the construction put upon different words in other wills affords but little help in such cases, and in *In re Blantern*, [1891] W. N. 54, the Court of Appeal said: "The proper rule for construing a will is to form an opinion apart from the cases, and then to see whether the cases require modification of that opinion; not to begin by considering how far the will resembled others on which decisions had been given."

Now here the testator gives the half to his father, and if he had stopped there no question could arise. But that is not all his meaning or intention. He means his brother to have something at the decease of his father. What is it? It is the "reversion," and evidently the reversion of what he had given to his father. I think the plain meaning of the words used, "with reversion to my brother," is, that what he has given to his father should "revert" to his brother on the event named, that is, should go over to his brother.

This construction gives effect to the words used by the testator, whereas the construction contended for by the appellant would give them no effect at all, but would hold them to be meaningless and useless.