

devised to Elizabeth Jane Fowler had lapsed, and that depended on whether the gift to her and the children of Emily was or was not to be treated as a gift to a class. North, J., considering the cases on the subject were irreconcilable, and acting on his own view of the case, came to the conclusion that the gift to Elizabeth Jane Fowler was not to her as a member of a class, and that consequently the bequest in her favour lapsed. From his decision the children of Emily appealed, and the Court of Appeal (Lindley, M.R. and Jeune, P.P.D. and Romer, L.J.) allowed the appeal, holding that Elizabeth Jane Fowler constituted with the children of Emily a class, and that the ordinary rule applied that on the death of one member of the class before the period of distribution, the other members who survived were entitled to the whole fund. Lindley, M.R. admits that he would himself have decided the case as did North, J., but for the fact that Romer, L.J., had convinced him that that conclusion was erroneous.

VENDOR AND PURCHASER—CONTRACT FOR SALE—SALE OF LEASEHOLD SUBJECT TO CONSENT OF LESSOR—DEFAULT OF VENDOR IN OBTAINING CONSENT—LOSS OF BARGAIN—DAMAGES.

Day v. Singleton (1899) 2 Ch. 320, was an action brought to compel performance of a contract for the sale of a leasehold property. The sale had been made subject to a condition that the lessor's consent could be procured. Pending the action the defendants, who were the personal representatives of the vendor, wrote to the lessor and induced him to refuse his consent. The plaintiff then amended his claim by claiming a return of his deposit and interest thereon, and also payment of his expenses and damages for the loss of his bargain. Romer, J., tried the action and held that the plaintiff was not entitled to any damages for the loss of his bargain; but the Court of Appeal (Lindley, M.R., Jeune, P.P.D., and Rigby, L.J.) held that as the defendants had induced the lessor to refuse his consent to the sale, they were liable to the plaintiff not only for the deposit interest and expenses, but also for damages for loss of bargain. It may be remarked that Romer, J., to some extent proceeded on a different view of the facts to that adopted by the Court of Appeal, being of opinion that it had not been proved that the defendant had induced the lessor to withhold his consent, the Court of Appeal thought that it had been proved, and at all events it was clear that they had not done what they could