

BRITTON, J.

DECEMBER 28TH, 1909.

RE BAUMAN.

Will—Construction—Residuary Bequest to Children—Right of Grandchildren to Deceased Parents' Shares—Gift of Residue Construed as not to a Class—Condition of Gift—Payment of Interest—Method of Computation—Responsibility of Executors.

Motion for an order determining certain questions arising in the administration of the estate of Wendell H. Bauman, deceased.

The testator died on the 24th April, 1909. His will was dated the 13th October, 1896, and by it he gave certain portions of his real estate to six of his seven children, viz., Joseph S. Bauman, Novah S. Bauman, Wendell S. Bauman, Mary Musselman, Magdalena Ziegler, and Judith Gingrich, mentioning them by name. He also mentioned by name his remaining son, Menno S. Bauman, saying that he had already given that son a deed for his farm. The devise of the homestead farm to his son Noah S. Bauman was "upon the condition that he shall pay unto me or my executors the sum of \$2,900 in ten equal successive annual instalments, with interest at the rate of four per cent. per annum;" and there were similar conditions with regard to some of the other devises. The devise of a farm to Mary Musselman was "upon the condition that my said daughter Mary shall have the use of the said farm during her lifetime, and in the event that her husband survives her, he shall have the use thereof during his lifetime from and after her decease. After the decease of my said daughter Mary and her husband, the said farm shall be equally divided between all the children of my said daughter Mary or their heirs, share and share alike."

The residuary clause was as follows: "The residue of my estate shall be equally divided between all my children, share and share alike, and the share of my daughter Mary shall be equally divided between her children, they to pay the interest thereon at the rate of four per cent. per annum unto their mother, and my executors may pay her the interest of her share so long as it remains in their hands, if they think she needs it for her own maintenance."

The seven children named in the will were all alive at its date. Joseph S. Bauman and Noah S. Bauman died in 1896, Judith Gingrich in 1904, and Wendell S. Bauman in April, 1908—each