

J. A. Soule, for the executors.

G. Lynch-Staunton, K.C., for Lavinia Gurney.

J. G. Gauld, K.C., for A. A. Gurney.

F. W. Harcourt, K.C., for N. Gurney, infant.

RIDDELL J.:—The scheme of the will is that the trustees are to pay all the income to Lavinia Gurney so long as there is no need for distribution—that when the time comes for distribution (supposing, as is the case, she has not married again) a fund is to be set aside of \$10,000, of which she is to receive the interest until her death or second marriage. A. A. Gurney was entitled on the 8th May, 1909, to receive a part of the principal; that made it the duty of the trustees to lay aside \$10,000 and pay her half the remainder. The other half is not then distributed, but remains in the hands of the trustees. Whether it is vested in the son, I take to be immaterial—the time has not come for the payment. The testator has made the words “distribute” and “pay” synonymous in respect of principal by the second paragraph of this clause; and I can see no reason why the “time for distribution” may not be the two times for distribution or payment.

Until the death of the son or until he attains the age of 30 years there is no reason why the widow should not receive the income unless and until, after the son is 25 years, the executors see fit to pay some part of the son's share to him under the provisions of the last paragraph in the clause.

This answers both questions.

Costs out of the estate.

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MEREDITH, C.J.C.P.

MAY 3RD, 1910.

THONGER v. CANADIAN PACIFIC R. W. CO.

*Railway — Injury to Passenger — Fall from Vestibule of Car —  
Proximate Cause—Voluntary Act—Negligence.*

Action for damages for injuries sustained by the plaintiff by reason of the negligence of the defendants, as alleged.

The plaintiff was a passenger on a train of the defendants on the 26th August, 1909, and was injured by falling from it, in daylight, just before dark. The coach in which he was travelling was not the rear one, but, beyond saying that, he was unable to say what its position in the train was. He was attacked with a fit of vomiting, and went out upon the platform of his car to relieve