

# The Ontario Weekly Notes

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## APPELLATE DIVISION.

FIRST DIVISIONAL COURT.

MARCH 12TH, 1918.

RE HEAL.

*Will—Construction—Bequest of Income to Daughter—Death of Daughter before Death of Testator—Residuary Devise to Daughter—Declaration against Lapse—Wills Act, sec. 37.*

Appeal by Elizabeth Keyes and cross-appeal by Carrie Heal and Laura Heal from the order of SUTHERLAND, J., 13 O.W.N. 285, determining questions arising as to the distribution of the estate of James Heal, deceased, upon the terms of his will.

The appeal and cross-appeal were heard by MEREDITH, C.J.O., MAGEE, HODGINS, and FERGUSON, JJ.A.

G. W. Morley, for Elizabeth Keyes.

W. J. Tremear, for Carrie Heal and Laura Heal.

W. H. Harris, for the executors.

E. C. Cathanach, for the Official Guardian.

THE COURT allowed the main appeal and made an order declaring that the residuary gift to the testator's daughter Mary Jane Hickey did not lapse by reason of her death in the lifetime of the testator, but took effect as if her death had happened immediately after the death of the testator, a contrary intention not appearing by the will: Wills Act, R.S.O. 1914 ch. 120, sec. 37. The cross-appeal was dismissed. Costs of all parties were directed to be paid out of the estate.