

*Held*, that the division intended, on the marriage or death of C., was of the income only, not the *corpus* of the estate; and that the five daughters took only life-estates.

Munro v. Smart, 310.

[Reversed on Appeal, 1st December, 1879.]

5. A testator, after sundry bequests and devises, amongst others an estate for life in all his lands to his widow, devised the same lands to trustees upon trust, within two years after the death of his widow, to sell and dispose thereof; to execute deeds, and to give receipts, &c. and "after the sale of my said real estate I give and bequeath the proceeds of such sale or sales to my nephew G. B., son of my brother Joseph, and to the following children of my brother George, (naming them) equally share and share alike, male and female, without exception, when they respectively attain the age of twenty-one, to them their heirs and assigns; and in the event of any of my legatees dying before getting their share or portion as aforesaid leaving child or children, in such case the child or children of my so dying shall inherit the share of the deceased parent." One of the nephews died during the lifetime of the widow without issue.

*Held*, that there was no bequest of anything until the sale had taken place; that the bequest was one of personalty, not of realty; that no interest vested in such deceased nephew, as he did not live till the time of sale; that the gift was not a gift to a class; and there being no residuary clause in the will, that the share of such deceased nephew lapsed and passed to the next of kin of the testator, and not to the legatee of the nephew.

Bolton v. Bailey, 361.

6. A testator devised his real and personal estate to his wife for life, for the benefit of herself and their children) and directed that, upon the death of the widow, his property should be equally divided among the children. *Held*, that only such of the children as survived the widow, were entitled to participate in such partition of the estate: and one of the sons, as personal representative of the testator, having purchased land with the moneys of the estate, and executed a declaration that he held the lands so purchased (except as to his own interest) in trust only for the other parties interested under the will, and afterwards died during the life of his mother. *Held*, that his children were not entitled to any share in such land, the only persons entitled being such of his brothers and sisters as should survive their mother. (BLAKE, V. C., dissenting, on the ground that these questions were not properly raised by the pleadings.)

Baird v. Baird, 367.