

10, he bequeathed to his daughter Saran Jane Byers the sum of \$3,000 to her own use. The will contained several further bequests. By para. 13, all the residue of the estate was devised and bequeathed to the daughter Clara in case she should be living at the expiration of 4 months from the date of the death of the testator's wife; in case Clara should not be living at that time, he gave the residue to such of his children as should be then living.

By a codicil he revoked the gift in para. 10 of the will, and substituted for it a gift of \$3,000 to Sarah Jane Byers to her own use in case she should be living at the expiration of 4 months from the date of the death of the testator's wife; but, in case of her not being then alive, he directed that the legacy should lapse. In all other respects he confirmed his will.

The widow of the testator died on the 5th January, 1917; the daughter Clara died on the 25th April, 1916, a spinster and intestate.

The executor asked to have para. 7 of the will construed and to have it determined whether, in view of the fact that the daughter Clara died before the widow, the devise and bequest to Clara contained in para. 7 lapsed and fell into the residue or whether they were vested and passed to her representatives.

The motion was heard in the Weekly Court at Toronto.

H. L. Ebbels, for the surviving executor of the testator.

J. Tytler, K.C., for Addie Fox and Nettie Smith.

The solicitor for Charles W. Rose and Sarah J. Byers was notified, but did not consider it necessary to appear.

FALCONBRIDGE, C.J.K.B., in a written judgment, said that, although the matter was not free from doubt, he thought that the devise and bequest to Clara Rose under para. 7 were vested.

He was unable to distinguish the case from the decision in *Re Brown* (1913), 4 O.W.N. 1401. The enjoyment of the gift was only "postponed to let in" the life-interest of the widow, as was said in *Packham v. Gregory* (1845), 4 Hare 396. Reference also to *Re Ward* (1915), 33 O.L.R. 262.

The change made by the codicil as to the gift to Sarah Jane Byers pointed to the same conclusion.

Order declaring accordingly. Costs out of the estate.