

There did not appear to be evidence before us as to whether plaintiff's brother John Henry Cooke died in the lifetime of the mother Phœbe Cooke. No doubt the fact was in the minds of the counsel who appeared at the trial, and was made known to the Judge.

At the close of the argument we intimated that if the fact was that John Henry Cooke did die before his mother, the judgment was right and would be upheld.

It is now stated on affidavit that John Henry Cooke died on 20th February, 1882, and his mother, Phœbe Cooke, on 22nd August, 1887.

We agree that the trustees had the right to make the conveyance on which plaintiff's title rests.

Appeal dismissed with costs.

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