

The Court held that those entitled to take were confined to the named persons, who came within the descriptive word "heirs" and that the technical meaning of that word must not be departed from unless to carry out the manifest intention of the testatrix; and that upon the whole will the Court was not "constrained to substitute 'legatees' for 'heirs.'"

In *Graham v. De Yampert*, 106 Ala. 279, a similar residuary clause was construed as directing a division among the legatees, when it appeared that no heirs in the strict sense of that word were included among the named persons; and in *Re Hull*, 96 New York State Reporter, the surrounding circumstances compelled the Court to think that the testator had used the word in some sense, other than its strict meaning, and held that in that will, it meant all the named beneficiaries.

In the will in hand, there is nothing to prevent me from giving to the word its strict meaning; in fact, there is much to prevent any other meaning being attributed to it. The testatrix has indicated her heirs by following the name of each, with the words "my nephew" or "my niece." The amount of the legacies given in the first instance, fifty dollars each, is comparatively small; and it is unlikely that she would have intended the comparatively large benefit, to be conferred upon strangers. Another factor is this; that unless she intended to differentiate between her heirs, and the strangers, it would have been much simpler to have directed a division among the nine, than to have adopted the more elaborate provision found in the will.

The order will therefore declare that the fund in question, be divided amongst the nephews and nieces; the costs of all parties to be paid out of the estate.

As the testatrix died intestate with respect to a parcel of land, the proceeds of this land will bear the costs.

MASTER IN CHAMBERS.

MARCH 4TH, 1913.

BROWNE v. TIMMINS.

4 O. W. N. 897.

Pleading—Statement of Claim—Motion to Set Aside—Irregularity
Hudson v. Fernyhough, 61 L. T. 722, distinguished.

MASTER-IN-CHAMBERS validated a statement of claim filed long after the time therefor had expired but ordered the action to go down to trial at once and made the costs of the motion to defendants in any event.

Hudson v. Fernyhough, 61 L. T. 722, distinguished.