

tor intended to benefit, and the language he used was a legally sufficient description.

The expression in the second clause above quoted was "any residue . . . after payment of the *above mentioned* legacies in full" etc. If this were read literally, the plaintiffs would not be entitled, as there was not sufficient to pay all who were *mentioned* in full. The presumption of law was, however, that the testator intended to dispose of all his estate and to include in the residue moneys representing lapsed legacies. The contest was as to the time when the three legatees died, respectively, and this was to be determined as a matter of presumption. When the 7 years have elapsed which, with other circumstances, gives rise to a legal presumption of death, the Court should not infer that the absentee died at any specified date during the 7 years. The Judge of the Surrogate Court was imposed upon by a false affidavit. The money in question was part of the estate of Timothy, and that estate had not been fully administered. The presumption of death arose at the end of the 7-year period, and was that the absentee died at some date, which the Court should not determine, within or at the beginning or end of that period. That legal inference should be drawn in this case, and, in the absence of proof of survivorship as a matter of fact, it should be declared that these legacies had lapsed. They belonged to the residuary estate bequeathed to the plaintiffs except the portion thereof necessary to make good the abatement suffered by the other legatees. The residue should be determined after payment in full.

There should be judgment declaring that the plaintiffs were entitled to these moneys and to a lien on these moneys in the bank (less the part payable to the other legatees, about \$30, and the Court and bank interest earned), and directing that the money deposited in the bank and the interest thereon be paid into Court to the credit of this action—the taxed costs of the plaintiffs' solicitor to be paid out of this fund. No costs to or against the defendants.

A sufficient sum to pay the legatees other than the three above named in full in the terms of the will should be paid out to the defendants' solicitor if he should be willing to distribute it—if not, it should remain in Court subject to further order.

It was possible that one or all of these legatees might yet be living. Subject to these payments or deductions, the money in question should be paid out to the plaintiffs, upon their filing in Court their undertaking, under their corporate seal, to abide by and perform such order as the Court might hereafter make for repayment or accounting, in case it should hereafter be shewn that these legatees or any of them survived the testator.