

year after the death of the wife; the shares were vested in the four beneficiaries named; the event upon which the son might take had not happened and could not hereafter happen. Distribution should be made upon the basis of apportionment or division at the date provided for by the will, that is, about the 19th November, 1909, subject to the question of conversion without loss to the estate or the action or desire of the beneficiaries. Order declaring accordingly. Costs of all parties out of the estate. W. D. McPherson, K.C., for the executors and the four beneficiaries. A. J. Anderson, for William Oswald Ward.

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RE MORTON—LENNOX, J.—JUNE 17.

*Will—Construction—Bequest to Nephews and Nieces Living at Decease of Testator—Exclusion of Children of Nephews.*]—Motion by the executors of the will of Edward Morton, deceased, for an order, under the Trustee Act and Rule 600, determining a question arising upon the following clause of the will: "I devise and bequeath all the residue of my estate . . . unto such children of my brothers Thomas, William, and John Morton as may be living at my decease, such children to take among each other in equal shares the share their father if living would have taken had I died intestate. If any of my brothers shall have died without issue or without issue living at my decease then the share his children if living at my decease would have taken shall be divided among the children of the other brothers living at my decease in the proportions and in the manner above directed." The will was executed on the 29th March, 1912; the testator died on the 8th October, 1913. At the time the will was made, the three brothers were dead, as the testator knew. All the brothers had issue living at the time of the testator's death. No difficulty arose as to the children of Thomas and John; and they had been paid their shares. William had four children, but only one (William the younger) was alive at the date of the testator's death; two children of William the elder had married and left children who were alive at the date of the testator's death. LENNOX, J., was of opinion that William the younger was entitled to the whole third of the residue—the will made it quite clear that only such children of the brothers of the testator as survived the testator were directly or indirectly to take under the will. Costs of all parties to be paid out of the estate or out of William's third if the rest of the estate had been distributed. M. G. Cameron, K.C., for the executors. Alexander Smith, for the son and grandchildren of William Morton.