

of the Kinloss farm to which she would have been entitled if she had survived the testator, is included in the gift of the residue.

The residue consists of the Kinloss farm and certain personal property of which the testator died possessed, and the question for decision is, whether the share of the residue which Catharine Harbourne would have taken had she survived the testator, lapsed, and is therefore undisposed of, or whether she and Mary Ann Carter were joint tenants of the subject of the residuary disposition, and the survivor, Mary Ann Carter, is therefore entitled to the whole.

There can be no doubt, I think, that as to so much of the residue as is real estate, the devisees would have taken as tenants in common had Catharine Harbourne survived the testator: R. S. O. 1897 ch. 119, sec. 11; and it follows that as to the undivided half devised to her there was a lapse, and it is undisposed of.

As to so much of the residue as consists of personalty, the residuary bequest is to the legatees as joint tenants, and the survivor is therefore entitled to the whole of it.

It was suggested as leading to a contrary conclusion that the blending together in the residuary gift of the real and personal estate was an indication of a contrary intention, within the meaning of sec. 27 of the Wills Act, but I am not of that opinion.

There is no more reason for thinking that this blending indicates an intention that the beneficiaries should take in the same way as legatees of personal property take, than that it is an indication that the personal property should go as real estate which is devised to two or more persons does under the provisions of sec. 11 of R. S. O. ch. 119. The disposition is not, therefore, taken out of the ordinary rule, and the devise of the real estate is to the devisees as tenants in common, and the bequest of the personal property is to them as joint tenants. . . .

Order declaring the true construction of the will in accordance with the opinion expressed. Costs of all parties out of the estate, those of the executors as between solicitor and client.