

No. 1747. Equity

The Bill sets forth all the facts, and the names of parties who might be interested in the fund in question. The real question is do the children of Mrs Legg, a deceased daughter of William Sauty, who was a brother of Theodore S. Sauty, and the child of Gideon H. Sauty, who is a grand daughter of Algernon Sidney Sauty another brother of Theodore S. Sauty, participate in such distribution. There is no controversy as to all the other parties named in the Bill of complaint, and no question in my mind about the right of such other parties to share in the distribution of said trust fund.

It will be remembered that William Sauty and Mrs Legg his daughter, both died before the testis que trust. Theodore S. Sauty, as did Algernon Sidney Sauty and Gideon H. Sauty his son, the father of Lucille Sauty. ---

The whole scheme and theory of the will seems to me to be that only those brothers, or in the event of death of any of them before Theodore S. Sauty, their children living at the time of his death, were to participate in the distribution of said fund. In the will it is directed, that "after his death" the fund was to go to his child or children and in case of his death without leaving any lawful child or children or the descendants of a lawful child or children then living in such case the fund was to go to his other sons, and "in case of the death of either of my said sons leaving lawful child or children then living such child or children to receive the same portion his or her parent would have received had he been living at the death of my said son Theodore.

The fund was not to be distributed until the death of Theodore, and only those of the classes who were to be the beneficiaries living at the time were to share in the fund. In that part of the clause providing for the contingency of the said Theodore dying without children, the testator provides another contingency upon the further vesting of the estate is to depend, which is that there be no descendants of a child or children of said Theodore then living. There is no such provision in the clause in which she makes the bequest over to her other sons, but it stops at the child or children of the said sons then living. Without discussing the various cases to which I have been referred, I deem it only necessary to say that the following cases have aided me in arriving at the above conclusion.

71 Md 175 Lowell vs Reed

73 Md. 451 Thomas vs Leving

87 Md 273 Slighoff vs. Johns

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