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to determine the rights of different Claimants to the fund decided. It was determined also that the daughter took an equitable life estate with the power of appointment. and as her will was not a valid execution of the power of such trust fund passed to the next of kin of the testator.
On appeal the decree of the lower Court was affirmed The only difference between that case and the present one. is that in the former the estate was to go to such as the daughter might designate by her last will. and in the present one to the children of Miss Fanny Adams if she left any Mrs. Meier failed to make a valid appointment. and Miss Adams failed to leave any children surviving her. There is really No difference or distinction between the two cases and the same rule of construction should be applied to both There is a failure of condition in both on which the vesting of the remainder depended. under the terms of both wills. and if in the one case the remainder vested in the next of kin of the testator. because of the failure to make a legal appointment. it likewise in the other case vests in the next of kin of the testator. because of the failure of Miss Adams to have children or leave children in whom it might be vested under the provisions of said will. In my Opinion the four thousand dollars should be distributed after the payment of the proportion of the costs and expenses of these proceedings. to the next of kin of the testator including Benjamin F Reich the executor of Miss Adams and the estate of Abraham T. Adams a deceased son of the testator.
The next question is to whom should the other fund of eleven hundred and seventy one dollars and sixty nine cents be distributed.
In that clause of the will the testator devises several life interests in the trust fund of six thousand dollars with the exception of the one fifth thereof. which he gives to his son Abraham T. Adams absolutely on the death of the widow. who was the first life tenant. on her death that fund was divided up in five portions. and four fifths of it was put in