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WILLS — CLASS GIFT TO PERSONS NAMED — By the terms of his father's will, the plaintiff was made beneficiary of a trust fund which the testator directed "shall be and is in full of all claim . . . which he is to have out of my estate." Specific bequests were given to two of the testator's sons. The residue was devised and bequeathed "in equal parts to my following named children" (the seven brothers and sisters of the plaintiff being named as legatees). One son who was named both as a specific and residuary legatee predeceased the testator. The plaintiff contended that the bequest to that son and his share in the residue lapsed and was undisposed of by the terms of the will, and, therefore, should be distributed as intestate property. The court *held* that the specific bequest to the deceased son fell into the residue and that the residuary gift was to be regarded as a class gift and divided among the six surviving residuary legatees. *Strauss v. Strauss*, 363 Ill. 442, 2 N. E. (2d) 699 (1936).[1]

The result in the principal case is the same as that reached by the Kansas court faced with a similar fact situation in the case of *Corbett v. Skaggs*,[2] but the theories of the cases differ. In the Kansas case the court refused to accept the rule that lapsed shares of deceased residuary legatees are to be treated as intestate property and held that in order to effectuate the intent of the testator the lapsed shares must go to the surviving residuary legatees. In the principal case the residuary legatees were regarded as a class and those members of the class surviving at the testator's death were permitted to take the entire gift. Both courts were guided by a desire to ascertain the intent of the

[1] Justice Farthing dissented on the ground that there was no class gift and that in the case of partial intestacy an heir cannot be disinherited whatever the testator's intent.

[2] 111 Kan. 380, 207 P. 819, 28 A. L. R. 1230 (1922). See notes in 36 HARV. L. REV. 230 (1922) and 21 MICH. L. REV. 485 (1923).

testator and to give effect to that intent [3] and both courts acted so as to prevent partial intestacy. From the act of executing a will a court will presume an intent not to die intestate as to any part of the estate.[4] The presence of a residuary clause serves to strengthen this presumption.[5] Direction that a certain individual shall take nothing or shall take so much and no more, or that a specific bequest shall represent the donee's claim in full [6] will not prevent that person from sharing in the case of intestate distribution.[7] However, a court will sometimes give effect to such provisions as against more general language of gift which would otherwise include the person described.[8] A class gift is peculiar in that the members of the class surviving at the time of the death of the testator take the entire property.[9] Ordinarily designation by name precludes the interpretation that the gift is one to a class.[10] This is true even if the persons so designated have such characteristics in common as to form a natural class.[11] However, if the testator's intent to make a class gift is manifested by other language in the will, the court will be ruled by that intent.[12] The result of the principal case seems proper in view of the testator's clearly expressed wish that the plaintiff have nothing beyond the specific bequest. The device of finding a class gift which obviates the necessity of rejecting or breaking the general rule as to lapsed residuary legacies seems to be a suitable means to the desired end.

E. R. M.

[3] This represents the general guiding rule in the construction of a will. De Charette v. St. Matthews Bank & Trust Co., 214 Ky. 400, 283 S. W. 410 (1926); Quarton v. Barton, 249 Mich. 474, 229 N. W. 465 (1930); Higgins v. Mispeth, 118 N. J. Eq. 575, 180 A. 562 (1935).

[4] Ford's Admr. v. Wade's Admr., 242 Ky. 18, 45 S. W. (2d) 818 (1931); In re Ives' Estate, 182 Mich. 699, 148 N. W. 727 (1914).

[5] Re Ingham, 315 Pa. 293, 172 A. 662 (1934).

[6] Language of this last description appeared in the instruments before the Kansas and Illinois courts.

[7] Tea v. Millen, 257 Ill. 624, 101 N. E. 209 (1913).

[8] Sullivan v. Straus, 161 Pa. 145, 28 A. 1020 (1894); Harper v. Harper, 148 N. C. 453, 62 S. E. 553 (1908); In re Winbigler's Estate, 166 Cal. 434, 137 P. 1 (1913) (niece who was "mad at" testator and consequently given nothing was not allowed to share as "heir" in residue); Re Estate of Sigel, 213 Pa. 14, 62 A. 175 (1905) (persons given specific sums "and no more" by codicil were allowed to share in residue as heirs); Bradley v. Matthews, 148 Ga. 613, 97 S. E. 674 (1918) (grandniece given sum "in full of all interest" allowed to share in residue as heir of named person).

[9] Trenton Trust & Safe Deposit Co. v. Sibbits, 62 N. J. Eq. 131, 49 A. 530 (1901); 2 PAGE, WILLS, 2d ed., § 932 (1926). See Cooley, " 'Lapse Statutes' and Their Effect on Gifts to Classes," 22 VA. L. REV. 373 (1936).

[10] Leroy v. Read's Exr., 252 Ky. 821, 68 S. W. (2d) 421 (1934); In re Young's Estate, 133 Misc. 454, 232 N. Y. S. 427 (1928); Cooley, "What Constitutes a Gift to a Class," 49 HARV. L. REV. 903 at 917 (1936).

[11] Kent v. Kent, 106 Va. 199, 55 S. E. 564 (1906).

[12] In re Billings' Estate, 268 Pa. 67, 110 A. 767 (1920); In re Hunter's Estate, 212 Mich. 380, 180 N. W. 364 (1920); Sears v. Brown, 241 Mass. 523, 135 N. E. 874 (1922); Fowler v. Whelan, 83 N. H. 453, 144 A. 63 (1928).