JAN. 13.—LORD ROMILLY, M.R.—This is a motion to discharge an order of mine, obtained by the plaintiff after decree, under the following circumstances:—The suit was instituted for the administration of the real and personal estate of Richard White, a deceased testator. By his will he gave, subject to certain legacies and directions therein contained, all his real and personal property to the defendant and John Springett, since deceased, in trust to sell and invest and hold the trust funds and annuities, as well as dividends and annual produce thereof, upon trust for his three grandchildren who should survive their father, Robert Hills, and attain twenty-five, equally to be divided between them. If only one survived her father, and should attain twenty-five, then the whole was to go to that one grandchild; if no one survived her father and attained twenty-five, then for his next-of-kin. He also further declared that if two of the three grandchildren died before their father, or under twenty-five years of age, and if the amount of property to which the surviving grandchild would thereupon become entitled should exceed £10,000, then that the surplus above that sum was to be held in trust for the persons other than the surviving grandchild, who would have been his next-of-kin according to the statute, if he had died at the death of the survivor of the two deceased grandchildren. The testator died, leaving the three grandchildren surviving him. One of the grandchildren died before attaining twenty-five, in July, 1865. The plaintiff, who is another of these grandchildren, filed this bill in July, 1866, for the administration of the estate against the defendant, the surviving trustee and executor, and her sister, Ellen Hills, the remaining or third grandchild. The plaintiff married pending the suit Mr. Eagles. The decree was made on the 13th February, 1867. It is an ordinary administration decree. It directs the usual assurance of the personal estate, an inquiry of what the real estate consisted, an account of the rents received by the defendant, an inquiry as to incumbrances, an inquiry as to the probable fortune of the infant; it directs a proper settlement to be made on the plaintiff, and directs a new trustee to be appointed in the place of the deceased trustee John Springett.

Since the decree Ellen Hills, the third and youngest grandchild has died, in September last, in the twentieth year of her age. The consequence of this is that the plaintiff, Mrs. Eagles, who attained twenty-three in September last, is the only surviving grandchild, and, consequently, her interest in the testator's property is confined to £10,000, and the surplus, which is considerable, belongs to the person after this Mrs. Eagles, who would have been the next-of-kin of the testator if he had died on the 12th day of September last, the day of the decease of Ellen Hills. On the first day of Michaelmas Term a bill was filed by the persons who alleged that they were such persons, against the surviving trustees, Mr. and Mrs. Eagles, and the two new trustees of the will appointed under the decree of November, 1867. This bill prays the administration of the real and personal estate of the testator so far as it remains unadministered. It asks that the rights and interest of all persons entitled under the will and codicils should be ascertained, and it asks for an inquiry to ascertain who are the persons entitled under the trusts of the will to the surplus exceeding £10,000. On the 7th of November the plaintiff in the first suit of *Hills v. Springett* obtained an order of course which was to this effect:—It stated the bill of the grandchild, Miss Hills; her subsequent marriage to Mr. Eagles, the revivor of the suit on that marriage; the decree of 13th February, 1867; the death of the defendant Ellen Hills. It then states that on her death certain persons, naming them, who in fact are the plaintiffs in the second suit, are the only next-of-kin of the testator living at the death of Ellen Hills, and it prayed and it was ordered [according to the common form, Seton on Decrees, 1164]. This is the usual order of revivor and supplement, and the persons named therein, who are the plaintiffs in the second suit, and who are sought to be made defendants to the first suit, move to discharge this order as irregular. If this order for revivor and supplement can be maintained, it must be under the 52nd section of the Chancery Improvement Act, 15 & 16 Vict. c. 86.

A great number of authorities were cited to me on both sides, amounting in the whole, I think, to thirteen, all of which I have carefully read and considered, but no one of these appears to me to apply to or to govern this case. These cases originally were very conflicting; that conflict has been in a great measure removed by the latest decisions, and the result appears to me to be settled down to this, that whether before or after decree if a sole plaintiff dies, or if a defendant dies, and the interest of the person so dying goes over to another, that other, whether person or persons, may be made parties to the original suit by an order of course for the revivor of that suit reserving, however, in the case of a sole plaintiff the right of any persons to contest the title of the person to revive the suit. And this may be done on a motion to discharge the order. This principle seems to me to have been carried to its fullest extent in a case of *Hobson v. Searwood* (*sup.*), which is a decision of mine, and which on reflection I think is correct; but it certainly goes beyond anything I have found in the other cases, but it does not govern the present case. In that case the widower by marrying again ceased to have any interest in the property administered, which thereupon went to others not claiming through him, but then his interest went over to other persons who were already parties to the suit, and only caused an accretion to their existing interests, and no inquiries or accounts were required in consequence of it. But in this case a totally different state of things arises. The interest springs up in a class of persons who before had no interest at all in the suit. It becomes, therefore, necessary to look at the clause in the statute and see whether the words of it apply to this case. [His Lordship then read the 52nd s. of 15 & 16 Vict. c. 86, and continued.] In order, therefore, to obtain the benefit of this clause, defect must arise by reason of some change or transmission of interest or liability. I think that means that this particular interest which was vested in one person on his death goes to another, or that the particular liability which attaches to one person upon his death attaches to another. Thus, for instance, the residuary devisee and legatee of a testator files a bill to administer the estate of his testator. Pending the suit he dies, leaving all his property to A. A. stands in the place of the original plaintiffs, and can revive the suit whether before or after decree. But I think that this clause does not apply, and was not intended to apply to a case where a fresh and distinct interest, not previously existing, arises in consequence of the death of a plaintiff or a defendant in another person not a party to the original suit, and up to that time in no way interested in it. In one sense, unquestionably, it is a change of interest, because there is an estate or a sum of money which before the death belonged to the plaintiff or to a defendant, and after the death of that person this property belongs to other persons. But I think that this is not the change of interest contemplated by the statute, which, in my opinion, applies only to a case where there is some privity between the party to the suit who dies and the person not a party who succeeds. If, however, the persons in whom the new interest arises be, as in the case of *Hobson v. Shearwood*, already parties to the suit, effect can be given to their interests; and, under the then subsisting decree, the suit may be set right by order of course under the clause in the statute. But in this case it is quite otherwise. On the death of Ellen Hills the plaintiff's interest is altered, instead of taking one-half she takes £10,000, and no more. If it stopped

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here this might be cured by the order of course, but the interest of Ellen Hills is transmitted to no one, it absolutely ceases and determines, no person claiming by, through, or under her can take anything, but instead of it a new class of persons springs up, viz., the persons other than the plaintiff, Mrs. Eagles, who would have been the next-of-kin of the testator in case he had died simultaneously with Ellen Hills on the 12th of September, 1867. I am of opinion that to ascertain who these persons are requires a fresh bill that this inquiry cannot be worked out properly by adding to the present decree. It would, in my opinion, be acting contrary to all practice and precedent to add to a decree such as the present the inquiry which would be required to work out the relief proper for the altered circumstances of this case. It is, in fact, a separate and distinct suit, which has nothing in common with the first suit except the accounts of the testator's estate, and the sums received by the trustees. I am of opinion, therefore, that this order is not warranted by the statute, and that it must be discharged, and that the costs must follow the event. It may be proper that I should remark here that neither the bill filed last nor the order of course which I direct to be discharged accurately states the interests which have arisen by reason of the death of Ellen Hills. This may lead to much confusion if the decree or inquiry should be ultimately taken in the form now prayed. The persons whose interests arise on and by reason of the decease of Ellen Hills are not, as stated in the third paragraph of the prayer, the next-of-kin of the testator, other than Mrs. Eagles, living at the death of Ellen Hills, but the persons who would have been his next-of-kin in case he had died simultaneously with Ellen Hills. This is distinctly stated in his will, and the persons to take would not be the same if any one of them had died since the death of the testator, or if any particular one had been born.

Solicitors, *Parker, Lee, & Haddock; E. S. Carell.*

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act as an agent or assistant to any glove manufacturer in Woodstock, save to the said C. Daggett, his executors, administrators, or assigns. And it is agreed that the purchases herein mentioned and agreed upon shall be completed on the 1st day of February next. The said C. Daggett agrees to employ the said W. Ryman at a fair and reasonable remuneration. The said W. Ryman agrees to pay all outgoings on the said property till the time of completion."

On or soon after the day fixed for completion the consideration money for the stock and goodwill was paid, and the equity of redemption conveyed to the plaintiff, who took possession of the property, giving his acceptance for the £250. The defendant continued in his employ for some months, and the bill charged that the defendant then voluntarily absented and discharged himself without any notice or excuse, and that in March, 1866, it was discovered that he had gone into partnership with a nephew, who had also been in the plaintiff's employ, as glove manufacturers in Woodstock, within two hundred yards of the plaintiff's place of business. The prayer of the bill was for a declaration that the plaintiff was entitled to specific performance by the defendant of the agreement of the 19th December, 1864, whereby the defendant agreed not to re-commence business in Woodstock, for an injunction restraining him from so doing, and payment of the damages sustained by the plaintiff by reason of the breach of the agreement, some particulars of which, namely, loss of orders and withdrawal of workmen, were specified in the bill.

The defence raised by the answer was, that the agreement for the sale of the business was on the express condition that the defendant should be employed in the manufacture by the plaintiff, and that he was, without any reason, discharged.

It appeared that, on the 18th July, the plaintiff dismissed the defendant from the work in the bleaching-field in which he was engaged, on account of his having, by his absence on the preceding day and some previous occasions, caused much valuable leather to be spoilt; but there was a conflict of evidence both as to these and