inquest were admissible against him, the trial Judge (Robertson, J.) having rejected the same, following Reg. v. Hendershott, 26 O. R. 678. Held, that service of a copy of the case and notice of hearing upon the solicitor retained by the defendant for the trial was not good service, as the solicitor's authority would, *prima facie,* terminate with defendant's discharge from custody on his acquittal. Held, also, there is in such case no cause pending which the Appellate Court can hear, unless a new trial is moved for and notice duly served; and as no one appeared for the defendant, the case was directed to stand over until notice of application for a new trial is served personally upon the defendant.

J. R. Cartwright, Q.C., for the Crown.

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COURT OF APPEAL.]

WALKER v. ALLEN.

Devolution of Estates—Children of Deceased Brother.

Where brothers or sisters are entitled to share on an intestacy, the children of a deceased brother or sister of the intestate are entitled to share *per stirpes.*

Re Colquhoun 26 O. R. 104 overruled.

(Burton, C. J. O., Osler and Maclennan, JJ. A.

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MR. HODGINS, Master-in-Ordinary.] [SEPT. 21.

RE JOHN EATON CO., LIMITED.

Company — Winding-up — Appointment of Liquidator.

Judgment upon application to appoint as permanent liquidator of the company in a winding-up proceeding under the Dominion Act Mr. Clarkson, the assignee, for the benefit of creditors under an assignment executed by the company before the winding-up proceedings were instituted. The assignee had been appointed interim liquidator, on the order being made for the winding-up. The learned Master-in-Ordinary said:—

Certain evidence warrants me in disapproving in the strongest language allowable to judicial utterances the attempted bargaining respecting the Court appointments of liquidator and solicitor. Had I allowed the objection that the letters and interviews about that bargaining were "privileged communications," I would have made the Court a condoning party to a proceeding known in outside affairs as "log-rolling." No privilege can be claimed or allowed by which any such bargaining respecting appointments of trust from this Court might be concealed or condoned. And if ever similar efforts to promote or control such appointments here should culminate in a bargain, I hesitate not to say that it will be my duty to use such judicial power as I possess to free the Court from the taint of complicity with such bargaining.

It is no part of my judicial duty to consider how the newspaper controversy or the contentions in these proceedings may affect Mr. Clarkson personally or in his commercial relations with the business community. Disregarding the quarrels and antagonism displayed in this case, and giving weight to what the justice of the case requires, I must consider only the best interests of the creditors of this company, and the qualifications of the officer to be appointed liquidator.

Were I to appoint some other person as liquidator than the assignee and trustee in whom the estate and rights of action of this company have been vested, such an appointment would most probably lead to the antagonisms deprecated by many judges, practically illustrated here, and waste the assets of the creditors in prolonged litigation on questions of provincial or Dominion jurisdiction.

Evidence has been adduced before me with the view of showing that