

The plaintiff will have judgment on the issues joined, with costs on the High Court scale, and reference to the Master to ascertain the damages. Further directions and costs reserved until the Master shall have made his report.

---

MIDDLETON, J.

MAY 31ST, 1911.

TORONTO GENERAL TRUSTS CORPORATION v. GOAD.

*Will—Construction—Income to be Equally Divided among Children on Attaining Twenty-five—Guardian or Tutor of “Any Child” to Receive Smaller Amount in Meantime—Right of Present Wife to Receive Whole Income of Her Children under 25.*

Action for construction of the will of Charles Edward Goad.

W. H. L. Gordon, for the plaintiffs.

I. F. Hellmuth, K.C., for Victor A. E., and J. L. Goad.

J. A. Paterson, K.C., for the widow, Agnes Goad.

M. Lash, for four children of the first marriage.

F. W. Harcourt, K.C., for the infants.

MIDDLETON, J.:—The clause of the will upon which difficulty now arises is by no means easy to construe. The clause in question deals with the income derived from the Canadian estate until the division of the corpus on the youngest living child attaining twenty-five years of age. The share of each child will be about \$50,000, yielding an income of about \$2,500, and the question is whether the widow (the second wife) takes the whole income from the shares of her unmarried children under 25 years of age, or \$400 per annum each till they attain eighteen and \$500 per annum each thereafter till they attain twenty-five or marry. As two of the children are young the matter is one of much importance to the mother.

The income from the Canadian estate, after providing an annuity for the mother, is to be equally divided among the children (there are four of the first marriage and four of the second marriage) and paid to the child on attaining twenty-five or marriage, but in the meantime the guardian or tutor of “any child” is to receive the smaller amounts I have named. Immediately following the provision is this clause, “The share