

There were no words of gift, but that was of no consequence—the testator was making a will disposing of his property, and the words “I give” or “I bequeath” might be understood.

The testator had 12,000 shares in Moose Horn Mines Limited, but it was not suggested that the par value was \$1,000. Evidence that the testator paid 10 cents per share for the stock, and that he frequently referred to the shares as having a value of \$2,000, was tendered. In addition to these shares, he had some other mining stock, some of it of no value, a small parcel of real estate, some money in the bank, his army pay, and \$1,433 owing to him for wages.

While evidence of surrounding circumstances is admissible in some cases to explain the meaning of words and for other purposes, no such evidence could be admitted here to explain whatever ambiguity arose from the language of this gift.

The difficulty was caused by the failure of the testator to use the word “and” before “\$1,000.”

Keeping in mind the principle that, where there is an evident intention to benefit some person and there is any ambiguity as to the extent of the gift, the Court will lean to that construction most favourable to the object of the testator's bounty (Halsbury's Laws of England, vol. 28, p. 763), the doubt ought to be resolved in favour of Jennie Dodds—it should be declared that she took both the 6,000 shares and the \$1,000.

What the testator intended was to give the 6,000 shares and \$1,000 to Jennie Dodds, his personal belongings, i.e., clothing and such like things, to his brother, a soldier like himself, and the remainder of his estate equally to his brother and sister.

Order declaring accordingly; costs of all parties to be paid out of the estate, those of the administrator as between solicitor and client.

GOSSELIN V. GAGNIER—KELLY, J.—AUG. 9.

Contract—Sale of Factory—Misrepresentations—Damages—Rectification—Claim and Counterclaim—Judgment—Costs—Set-off.]
—This action arose out of a sale by the defendant to the plaintiff of a munitions factory in Peterborough in December, 1916. The plaintiff alleged misrepresentations and claimed damages and a rectification of the agreement for sale and other relief. The defendant counterclaimed for payment or allowance of several items. The action and counterclaim were tried without a jury at a Toronto sittings. KELLY, J., in a written judgment, made a full statement of the facts and made findings thereon. He directed that