

to participate in these principal moneys, while the two surviving sisters contended that they alone were entitled.

The leading decisions affecting the question thus raised are to the effect that a bequest to the next of kin, without more, or where there is no manifestation of any different purpose in the will, means to the nearest blood relations in equal degree to the propositus, and that these take as joint tenants. Those, therefore, entitled are the next of kin in the strictest sense, to the exclusion of persons entitled by representation under the Statute of Distributions. Applying that to the present case, the sisters of Francis Lally who survived him were entitled, to the exclusion of children of his brothers and sisters who predeceased him: *Elmsley v. Young* (1835), 2 My. & K. 780; *Cooper v. Denison* (1843), 13 Sim. 290; *Avison v. Simpson* (1859), Johns. Ch. 43; *Rook v. Attorney-General* (1862), 31 L.J.N.S. Ch. 791; *Halton v. Foster* (1868), L.R. 3 Ch. 505.

Costs of the Toronto General Trusts Corporation, as between solicitor and client, out of the fund.

No order as to the costs of the other parties.

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BLACK v. CANADIAN COPPER CO.—TAILLIFER v. CANADIAN COPPER CO.—SUDBURY DAIRY CO. v. CANADIAN COPPER CO.—BELANGER v. CANADIAN COPPER CO.—CLARY v. MOND NICKEL CO.—OSTROSKY v. MOND NICKEL CO.—MIDDLETON, J.—MAY 31.

*Nuisance—Injury to Crops and Soil by Vapours from Smelting Works—Evidence—Damages in Lieu of Injunction—Judicature Act, R.S.O. 1897 ch. 51, sec. 58 (10)—Assessment of Damages—Costs.*]—Action for damages alleged to have been sustained by the plaintiffs respectively in respect of their neighbouring farms and gardens, etc., from vapours contained in metallurgical smoke issuing from the roast-beds and smelter-stacks of the defendants, near Sudbury. In all the actions claims were originally made for injunctions, but these claims were abandoned, and the cases resolved themselves mainly, if not altogether, into assessments of damages. The actions were tried without a jury at Sudbury and Toronto; 34 days were occupied in the trial. MIDDLETON, J., in an elaborate written judgment, said that the difficulty was to ascertain what damage, if any, had been done by the emission of the smoke-vapours from