

cemetery containing his tomb ; third, the balance to be paid to his adopted daughter, Ida M. Armstrong. He then directed that at the end of 10 years his executors were to sell all his real estate, and out of the proceeds thereof to pay \$1,000 to Ida M. Armstrong and \$500 to Joanna Story, and to invest a sufficient portion of the balance of the purchase money to yield an income of \$10 a week to Frederick during his life, and to invest a further sum sufficient to yield an income of \$10 a year to be paid to the caretaker of the cemetery, "and to divide the balance among Ida M. Armstrong and the surviving children of my said sister Mary E. Upthegrove, share and share alike, and on the death of my said son the principal money so invested for his benefit is to be divided in like manner among the surviving children of my said sister Mary E. Upthegrove and said Ida M. Armstrong, share and share alike. All the residue of my estate not hereinbefore disposed of, I give, devise, and bequeath unto my said sister Mary E. Upthegrove."

W. M. Douglas, K.C., for the executors and Mary E. Upthegrove.

F. W. Harcourt, for infants.

TEETZEL, J.—The provision for division among Ida M. Armstrong and the surviving children of Mary E. Upthegrove, share and share alike, directed to be made at the end of 10 years, designates the same persons only as the testator intended to benefit by the division at the death of his son. Although in speaking of the second division he transposes the names of the beneficiaries in such a way as might lend some colour to the contention that he intended to benefit the children of Ida M. Armstrong, the use of the words "in like manner," in connection with the second distribution, manifestly limits the distribution to Ida M. Armstrong and the children of Mary E. Upthegrove. The trustees are now justified in delivering to Mary E. Upthegrove and her daughter, who have acquired the interests of Ida M. Armstrong and the other beneficiaries, the remaining estate in their hands, subject to the legacies, notwithstanding that 10 years have not elapsed since the testator's death. The executors may retain a sum to provide in perpetuity for payment of \$10 per annum to satisfy testator's direction in regard to care of his tomb. Costs of all parties out of the estate.