

RE McLAUGHLIN—SUTHERLAND, J.—APRIL 10.

*Will—Construction—Devise—Estate—Bequest of Personal Property—Absolute Use during Lifetime of Legatee—Disposition of Remainder (if any)—“Issue.”*]—Application, upon originating notice, by the executors, for an order determining questions arising upon the will of Ellen C. McLaughlin, deceased. The important portions of the will were contained in two paragraphs: (1) “I hereby bequeath to my stepson Thomas W. McLaughlin my house and property in Fordwich, also all household effects and personal property, also he can use or sell part or whole of same if he so requires it for his own maintenance.” (2) “I also leave him all my estate also if said Thomas W. McLaughlin should die without heirs the remainder of estate if any to be equally divided between my late husband’s (David McLaughlin) children and grandchildren as follows: his daughter Minnie Stovin and children, Robert J. McLaughlin and children, David W. McLaughlin and children and the children of his daughter Jane Ann.” SUTHERLAND, J., said that, in his opinion, Thomas W. McLaughlin took under the first paragraph a fee simple estate in the land and an absolute gift of the household effects and personal property in the house or otherwise thereon. The concluding words in this paragraph, commencing with the word “also” did not cut down the wide effect of the preliminary clause. As to the second paragraph a different view must be taken. The material filed shewed that it affected personal property only, consisting of mortgages, promissory notes, and cash in bank. While, under this paragraph, Thomas W. McLaughlin took the personal property, and appeared to have the absolute use of it during his lifetime, so that he might, if necessary, so trench upon it as that there might at his death be no remainder, it nevertheless provided that, if there should be, and he should die without issue, such remainder would be affected by the words which followed. The words “without issue” meant without children. In case Thomas W. McLaughlin should die leaving children, they would take such remainder: *Shearer v. Hogg* (1912), 46 S.C.R. 492. But, if he were to leave no issue, then such remainder would go to the children and grandchildren of the husband of the testatrix, as indicated. In this latter event, it was conceded in argument, as seemed plain, that the division would be per stirpes and not per capita. Costs of all parties out of the fund. W. Proudfoot, K.C., for the executors and unborn children of Thomas W. McLaughlin. R. Vanstone, for Thomas W. McLaughlin. J. R. Meredith, for the Official Guardian, representing the infants.