

my heirs named in this will as devisees after erecting a monument over my grave costing not less than \$100."

(10) He requested Mrs. John G. Barber (Lucy) to take charge of his papers and property until disposed of by his executors.

(11) He appointed executors.

(12) He added: "I do not designate the following as my heirs or devisees, viz., Ed. Bedour, Amelia Bedour, and Julia Bedour."

Besides John G. Barber, devisee of the house and lot, and the persons to be paid the trifling sums mentioned in para. 9, there were eight legatees, namely, Pearl McDonald Peguin, Karley Pinkerton, Caroline Phyllis Morrison, Callie Morrison, Caroline Vickery, Edward Bedour, Amelia Bedour, and Julia Bedour—of whom only one, Caroline Vickery, was a blood relation. At his death, the testator had three sisters alive, namely, Caroline Vickery, Lucy Barber, and Elizabeth Miller; another sister, May Pinkerton, was dead, leaving children, the son of one of whom was a legatee.

The questions for determination were:—

(a) Who were the "heirs" of the testator entitled to share in the residue under para 9?

(b) Who were the "heirs" entitled to a contingent interest under para. 2?

(c) Is "Mrs. John G. Barber," named in the will, but not given anything for herself, to be included as an "heir" under the contingent request in para. 2?

Reference to *Re Phillips* (1913), 4 O.W.N. 898.

Having regard to the language of the whole will in this case the word "heirs" should be taken to mean devisees and legatees.

Question (a) should be answered by saying that the "balance" referred to in para. 9 should be divided equally among the five legatees above named, excluding the Bedours.

The same answer should be given to question (b).

Question (c) should be answered by saying that Mrs. John G. Barber will not be included as an heir.