

their respective heirs in equal proportions per stirpes and not per capita." Mrs. Almon executed her power of appointment as to one-third of the property in favour of her husband who survived her. She died without ever having had any children, leaving four sisters and the widow of her deceased brother David D. Robertson and their five children surviving. The question as to which the trustees now ask for directions is as to the meaning to be given to the word "heirs" in the clause I have quoted. On the part of the widow of David D. Robertson it is claimed that the word must be read as meaning the statutory next of kin, so that so much of the one-fifth share of the fund as consisted of personal estate would be divisible under the Statute of Distributions, in which case the widow would be entitled to one-third. On the part of the children of David D. Robertson it is claimed that the word must be read in its primary sense as "heirs at law," in which case the whole fund would go to them to the exclusion of the widow. No doubt there are many cases to be found where Judges, in order to carry out what from the provisions in the will, they concluded was the testator's intention, have given to the word "heirs" and other similar expressions having a well understood technical meaning, an altogether different interpretation similar to that proposed here, and in order to carry into effect this intention, they have incorporated into the will provisions of the Statute of Distributions, as must be done in the present case in order to include the widow as a participant in this fund. After an examination of many of these cases I have come to the conclusion that they are not applicable to the present and that the widow's claim cannot be sustained. It is not disputed that this must be the result unless the word "heirs" was used by the testator in some other than its primary and ordinary meaning. In *Keay v. Boulton*, 25 Ch. D. 212, cited by Mr. Teed as a representative case of the class to which I have referred, Pearson, J., says: "The next question is, what is the meaning of the word 'heirs,' the gift including both real and personal property? Is the word 'heirs' used in the sense of *persona designata*, indicating the person who would have been the heir-at-law of real estate of a child who had died intestate, or is it to be read in a qualified sense, so as to give the real estate to those persons who would in the event of the intestacy of the deceased children have taken their real estate and the personal estate to their next of kin accord-