

The Ontario Weekly Notes

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HIGH COURT DIVISION.

LOGIE, J.

NOVEMBER 6TH, 1919.

RE GARTLAND.

Will—Construction—Bequest to Wife for “Sole Use of herself and my Children”—“Disposing of Property among Children”—Wife and Children Taking as Tenants in Common.

Motion by the widow and executrix of James Gartland, deceased, for an order determining the meaning and effect of the will of the deceased.

The motion was heard in the Weekly Court, Toronto.
F. Denton, K.C., for the executrix.
F. W. Harcourt, K.C., for the infants.

LOGIE, J., in a written judgment, said that the words of the will were the following: “I give devise and bequeath all my property real and personal . . . to my wife Margaret Gartland for the sole use of herself and my children Florence Rosaleen and Madeline and Michael Stanley, my wife to have charge of everything and use her best judgment in disposing of the property among the children after each comes of age.”

Looking at this wording of the will, could it be suggested reasonably that the testator expressed an intention that the persons among whom the widow was to dispose of the property were the persons whom the Court was to exclude from all benefit under the will, and that the widow should take all?

Or, conversely, was the person to whom the property was given “for the sole use of herself” and others, to be excluded?

The true construction of these words, considered alone, did not lead to the harshness of excluding either wife or children,