

The motion was heard in the Weekly Court at Toronto.  
W. F. Kerr, for E. W. Loscombe and F. C. Loscombe.  
D. B. Simpson, K.C., for H. C. Loscombe, Blair T. Reid, C. W. Loscombe, and George S. Reid.  
C. J. Holman, K.C., for Katie Klosse.

MIDDLETON, J., in a written judgment, said that the late Robert Russell Loscombe, on the 3rd March, 1873, made an ante-nuptial settlement in view of his approaching marriage with Catherine Reid. He was then a widower with six children, and Mrs. Reid a widow with three sons. The marriage was duly solemnised, and one child, Ernest W. Loscombe, was issue of the marriage. The settlor died in October, 1915— his wife having predeceased him, in August, 1914. Annie Burnham, a daughter of the settlor, predeceased him and his wife, and left her surviving a daughter, Katie Klosse, who claimed a share in the property to be distributed after the death of the settlor and his wife.

It was objected that E. W. Loscombe was not duly appointed and was not in fact trustee under the settlement. The original trustees were two in number, and both were now dead. Under the deed, the settlor and his wife had power to appoint new trustees if any trustee should die or become incapable of acting. No appointment could be found; but on the 26th August, 1904, a deed was executed by the settlor and his wife, which recited the settlement, the death of Fisher, the incapacity of Cameron, and that E. W. Loscombe was appointed trustee. This deed amounted to an appointment and cured any irregularity or defect in any former appointment: *Poulson v. Wellington* (1729), 2 P.Wms. 533; *In re Farnell's Settled Estates* (1886), 33 Ch.D. 599. The objection failed.

The property was by the deed conveyed to trustees for the benefit of the husband for life and on his death for the benefit of the wife for life, charged in each case with the maintenance of the children, "and from and after the decease of the survivor" upon trust for the support, education, and maintenance of the said children respectively as aforesaid until the youngest child becomes of the age of 21 years, when the trustees "shall sell . . . the property . . . and shall divide the proceeds of such sale, as well as all other moneys appertaining to the said trust, between the surviving children of the said Robert R. Loscombe and Catherine Reid and of either of them and the children of the said intended marriage share and share alike." There was no clause in the deed making any provision for the children of any child who might predecease, and the only gift to children was in the direction to divide, above quoted.