

wife Hannah executrix and his son Charles and Peter Algie executors.

H. H. Collier, K.C., for the plaintiffs.

E. D. Armour, K.C., and M. J. McCarron, for the defendant.

MULOCK, C.J. (after stating the facts):—During his residence in St. Catharines the testator treated and represented Hannah Lobb as his lawful wife and their children as their lawful issue, having them registered as such in the records of St. George's Church, St. Catharines.

The question to be determined is who of his children are included under the word "children" in his will. *Prima facie* the word "children" imports legitimate children only, but this interpretation yields where a contrary intention, which the law is entitled to regard, appears. . . .

[Reference to *Hill v. Crook*, L. R. 6 H. L. 276; *Dorin v. Dorin*, L. R. 7 H. L. 573; In re *Haseldine*, *Grange v. Sturdy*, 31 Ch. D. 519.]

In the present case legitimate as well as illegitimate children survived the testator, and both classes may share if it is established that such was the testator's intention. The word "children" is a generic term, including both classes. A testator is entitled to bequeath his property to his children, legitimate and illegitimate, or to any to the exclusion of the remainder, and if it is manifest that he intended the word "children" to include both classes, both may take.

A contrary view was held in *Bagley v. Mollard*, 1 R. & M. 581, but it is now well settled that in a gift to "children" both classes may take if that be the manifest intention of the testator. The authorities on this point are collected at p. 281 of the 6th ed. of *Theobald on Wills*.

The defendant contends that the word "children," as used in the will, was intended to include only himself, his brother James, and his sister Annie, to the exclusion of the testator's lawful issue. The onus is on the defendant to satisfy the Court that such is the proper interpretation. . . .

[Reference to *Wort v. Cubitt*, 19 Beav. 431; *Megson v. Hindle*, 15 Ch. D. 198; In re *Walker*, 2 Ch. D. 243; In re *Byron*, 30 Ch. D. 185; In re *Horner*, *Eagleton v. Horner*, 37 Ch. D. 695; In re *Hall*, *Bartman v. Wightman*, 35 Ch. D. 555; *Smith v. Jobson*, 59 L. T. R. 397; In re *Brown*, *Brown v. Brown*, 37 W. R. 473; In re *Brown*, *Walsh v. Brown*, 62 L. T. R. 890; *Mansel v. Allen*, [1901] 2 Ch. 447; In re *Smilter*, *Bedford v. Hughes*, [1903] 1 Ch. 199; In re *Wood*, [1902] 2 Ch. 543.]