

NEW BRUNSWICK.

SUPREME COURT IN EQUITY.

BARKER, C.J.

SEPTEMBER 21ST, 1909.

SMITH ET AL., TRUSTEES, ETC., OF ROBERTSON v.
ROBERTSON, ET AL.

*Will—Construction—Administration of Trusts—Heirs at
Law—Statutory Next of Kin—General Scheme of Will.*

Bowyer S. Smith, for the plaintiffs.

M. G. Teed, K.C., and W. A. Ewing, K.C., for defendants.

BARKER, C.J.:—When this case was before me in February last there was a declaration made (1) that in order to make the payment to the executors of the will of L. J. Almon of the one-third share of the property comprised in schedule "A" appointed to him, the plaintiffs have power to sell and dispose of it as they may deem necessary, and (2) that the unappointed two-third shares of Mary Allan Almon in the same property should be divided now into five equal shares, one share to each of the surviving children of the testator and one share to the heirs of David D. Robertson.

In accordance with this declaration the plaintiffs have sold the property included in Schedule "A." that is, Mrs. Almon's property, and the fund is ready for distribution under the will. This property was by the terms of the will vested in the plaintiffs, the present trustees, upon trust on Mrs. Almon's death to convey one-third of it to such person or persons and upon such trusts as she might appoint. The remaining two-thirds were in the case of a daughter dying leaving children surviving, to be held by the trustees for the benefit of the children as particularly directed in the will. In case a daughter died leaving no issue surviving the will provided as follows: "And in the event of my daughter dying, leaving no issue her surviving, then and in such case I will and direct that the said two-thirds and one-third before mentioned (if no disposition of the same shall be made by my said daughter) shall be equally divided by my said executors and trustees between her sisters and brothers and