

must be regarded as scandalous, i.e., offensive and irrelevant, and as tending to embarrass the trial of action. They were also open to the objection that they attempted to set up what virtually amounted to a justification, without actually justifying the alleged libellous statements. Appeal dismissed with costs to plaintiff in any event.

MACMAHON, J.

OCTOBER 12TH, 1903.

CHAMBERS.

RE KARN.

*Will — Construction — “ My own Right Heirs ” — Period of Ascertainment — “ Then ” — Division of Residue — Specific Devisee Entitled to Share.*

Motion by the surviving executors of the will of the late Jacob Karn, the elder, for an order declaring the construction of his will, which was executed on the 2nd July, 1867. The testator died on the 20th July, 1874. Part of clause 6 of the will was: “ And I also give and bequeath to my said daughter Marilla the north-west quarter of said lot No. 27 in the 12th concession of East Zorra, to hold the same to her free from any interruptions, curtesy, claim, right, or demand, by her present or any future husband, or for liabilities or debts by him contracted, for her natural life; and after her death I give, devise, and bequeath the same to my granddaughter Louisa, the daughter of the said Marilla, but if my said granddaughter Louisa be not then alive, the same I give and bequeath to her children lawfully begotten, in fee, but failing such children then alive, to my own right heirs absolutely forever.” Marilla Cummings died on the 30th December, 1902, testate. Her daughter Louisa had predeceased her, unmarried.

J. S. Mackay, Woodstock, for the executors and some of the next of kin of Jacob Karn.

J. G. Wallace, Woodstock, for the executors of Marilla Cummings and for John Karn and Catharine Adams.

MACMAHON, J., held, that the word “ then ” twice used refers to the same event, the death of Marilla. The right heirs of the testator were those existing at the date of Marilla’s death: Theobald on Wills, 5th ed., p. 312; Long v. Blackall, 3 Ves. 486; Wharton v. Barker, 4 K. & J. 483; Re Morley’s Trusts, 25 W. R. 825; Sturge v. Great Western R. W. Co., 19 Chy. D. 444; Re Milne, Grant v. Heyshaw, 59 L. T. N. S. 628; Harvey v. Harvey, 3 Jur. 949.