

per cent. till my youngest child shall be of the age of 21 years, after which time said payment of interest on the \$1,000 shall be discontinued. 5. Also my wife, Anna Victoria, shall have the sum of \$1,000 absolutely to be used to support the family till an income shall begin to accumulate. 6. If said executors, together with the advice of my brother Joseph P. Marshall, shall deem necessary to use not more than \$300 more than the income any year during the first 5 years after my demise, they may do so. 7. If said executrix and executor shall deem advisable, and on the recommendation of said Joseph P. Marshall, the sum of \$100 may be given to any one of my children for 3 years in succession, to complete an education, said sum to be deducted from said child who receives it at the final distribution.

This will was not made until more than 5 years after the date of the indorsement upon the beneficiary certificate, and its terms are inconsistent with an intention to declare in it the trusts which the testator intended to declare by will when he made the indorsement on the certificate. He evidently intended by this will to deal only with the property over which he had full disposing power; he did not intend by it to set forth the shares and proportions in which the money secured by the certificate should be divided amongst his children. In my opinion, the matter stands as if the testator, after making the indorsement on the certificate, had died intestate. He has declared that the fund is to go to his children (which means all his children) in proportions to be thereafter fixed by him by will; he has died without fixing these proportions; and the result must be that all his children take the fund in equal shares, and I so declare.

Costs of all parties out of the fund, those of the executor as between solicitor and client.

ANGLIN, J.

MARCH 9TH, 1905.

TRIAL.

HUNT v. TRUSTS AND GUARANTEE CO.

Distribution of Estates—Ascertainment of Next of Kin of Intestate—Questions as to Legitimacy of Uterine Brother—Marriage Laws of State of New York—Bigamous Marriage of Wife of Absentee—Statutes—Presumptions.

Action for a declaration of plaintiffs' status and rights as next of kin of one George W. Todd, who died intestate at Hamilton, leaving a considerable fortune. Plaintiffs and defendants other than the company (administrators) were