

At the trial it was found that the plaintiffs were children of the testator by his wife, Fanny Atwood, and were born in wedlock.

The evidence shewed that the testator was married to Fanny Atwood in England on the 2nd December, 1838, and lived with her there until 1853, when he deserted her, and came to America, since which time there had been no communication between them. Of this marriage there were six children, including the plaintiffs. Fanny Atwood survived the testator, who died on the 17th March, 1883.

About the year 1874 the testator became a resident of St. Catharines, living there with one Hannah Lobb as his wife, by whom he had four children, born at various times from 1864 to 1874. The eldest of these four predeceased the testator, and the three surviving children were infants, living with their parents, when the testator died. Their mother died in 1909. The three children were illegitimate, and the question was, who were entitled under the will to the benefits given by the testator to his "children."

The will was dated the 26th February, 1883, and by it he devised a farm to his son Charles Garfield Lobb, another farm to his son James Algie Lobb, a house to his daughter Annie Lobb, and two houses (one with the furniture therein, &c.) to his wife Hannah Lobb for life, "and after her death to go to and be divided between my children share and share alike, or the survivors of them. . . . The homestead and furniture to be kept for the use and support of my wife and children during her lifetime, but no sale to be made until my youngest child becomes of age." He also devised other lands to his executors to sell and apply the proceeds for the support and maintenance of his wife and children until the youngest should be of age and then to divide the proceeds, one-third to his wife and the balance between his children or the survivor of them share and share alike. "And all moneys belonging to me at the time of my decease and debts of every kind or description . . . I give to my executors to collect, sell, or realise . . . for the benefit and support of my said wife and children, and it is my expressed will and intention that, in the event of any of my children dying without issue before my youngest child becomes of age, his or her share of my estate shall go to the survivors, share and share alike, and I do hereby require my executors . . . to invest all moneys and apply the interest . . . for the support and maintenance of my said wife and children until the youngest child becomes of age and divide the amounts then in their hands or in trust between my said wife and children or the survivors of them." And he appointed his