

lateral to the judgment. There appears to be a real issue between the parties, which cannot be disposed of without a trial. That issue might well have been raised by an application in the old action, but this, it appears to me, is a question going only to costs, and it can be dealt with at the trial.

In the meantime the proper disposition of this motion is to direct the sheriff to pay the money in his hands, less his costs up to this date—which should be fixed at a nominal sum—into Court to the credit of this cause, to abide further order, and thereupon the sheriff should be dismissed from the action.

There seems to be no justification for making the solicitor a party to the suit. His name should be struck out, without costs, and the action should proceed to trial, as between Brazeau and Bedard, for the purpose of determining the question raised.

Save as aforesaid, the costs will be dealt with by the trial Judge.

MIDDLETON, J.

JANUARY 4TH, 1915.

RE HISLOP.

*Will—Construction—Division of Estate among Named Brothers and Sisters by one Brother “according to his Best Judgment”—Trust—Imperative Direction—Discretion—Limited Power—Division Based upon Equality—Exercise of Judgment as to Attaining Equality—Tenancy in Common—One Sister Named in Will Predeceasing Testator—Intestacy as to her Share—Ascertainment of Next of Kin of Testator at his Death—Sister Surviving Testator but Dying before Division—Vested Share Passing to Representatives.*

Motion by the executor of the will of Philip Hislop, deceased, for an order determining three questions arising upon the will.

The motion was heard by MIDDLETON, J., in the Weekly Court at Toronto, on the 23rd December, 1914.

L. Harstone and R. S. Robertson, for the executor.

N. W. Rowell, K.C., for Mrs. Hislop.

W. Davidson, K.C., for the representatives of Euphemia Moody.

R. S. Hays, for D. Hislop.

G. G. Albery, for the Glover family.

J. W. Graham, for Margaret Hislop.