

MEREDITH, C.J.C.P.

NOVEMBER 26TH, 1920.

## RE ANDERSON.

*Will—Construction—Devise—Life-estates—Remainder Devised to  
Childern of Life-tenants—Gift to Class—Time at which Class  
to be Ascertained.*

Motion, upon originating notice, by George Tocher Anderson and Isabella Jessie Anderson, for the opinion, advice, and direction of the Court on a question arising as to the construction of the will of William Anderson, deceased.

The clause of the will which gave rise to the difficulty was as follows:—

“I give devise and bequeath unto my trustees and executors hereinafter named to the use of my son George during his lifetime upon trust that they the said trustees and executors and the survivor of them and the executors and administrators of such survivor shall and do by and with the said estate as they shall deem most expedient for the support and maintenance of my said son George and his family my farm on lot number 22 in the 2nd concession of the said township of Whitby containing by admeasurement 90 acres . . . to have and to hold the same to my trustees and executors hereinafter named to the use of my said son George during his lifetime as aforesaid and after his decease to the use of his wife and after the decease of his said wife I give devise and bequeath the last mentioned land and premises unto the children of the said George Anderson to have and to hold to them their heirs and assigns forever.”

The motion was heard in the Weekly Court, Toronto.

W. J. Beaton, for the applicants.

F. W. Harcourt, K.C., for the infants.

MEREDITH, C.J.C.P., in a written judgment, said that it was stated that George Anderson had four children, two of whom died during the life-tenancies; but the necessary facts had not been set out so that particular rights could be considered. It would, however, be enough to state generally who were entitled, and the facts of each case could then be applied so as to make individual rights plain.

The gift was to a class, and the main question involved was: At what time are the members of that class to be ascertained?

If the testator had expressly or impliedly fixed the time, that must govern: it was his will which was to be given effect.