

The  
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APPELLATE DIVISION.

MAY 5TH, 1914.

RE ROCQUE.

*Will—Construction—Residuary Bequest—Division of Residue among three Children and one Grandchild—One of the Children Dead at Date of Will, but Leaving Children—Right of Children to Parent's Share—Wills Act, 1910, sec. 37—Costs.*

Appeal by William Hague and others, the children of Catharine A. Hague, a daughter of Margaret Jane Rocque, the testatrix, from the judgment of MIDDLETON, J., ante 36, construing the will of the testatrix, and declaring an intestacy as to one-fourth of the residuary estate, bequeathed to Catharine A. Hague, who had died before the execution of the will, leaving surviving her issue living at the death of the testatrix and now before the Court.

Section 37 of the Wills Act, 10 Edw. VII. ch. 57, provides: "Where any person, being a child or other issue of the testator, to whom any real estate or personal estate is devised or bequeathed for any estate or interest not determinable at or before the death of such person, dies in the lifetime of the testator, leaving issue, and any of the issue of such person are living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention appears by the will."

The appeal was heard by MULOCK, C.J.Ex., CLUTE, RIDDELL, SUTHERLAND, and LEITCH, JJ.

W. D. McPherson, K.C., for the appellants.

E. T. Coatsworth, for the executors.

J. R. Meredith, for the infants.