

into fourths: one-fourth being intended for the benefit of each of the four children of testator. After the end of the twenty-one years and before the death of the last surviving child, distribution was to be made, with the accumulations of income, among all the beneficiaries. The children and their families were absolutely entitled to the beneficial use of all the income during the period beginning twenty-one years after testator's death and the death of his last surviving child. During the twenty-one years the children were not absolutely entitled to the whole income from year to year, but the frame of the will was such that the trustees, *in loco parentis*, should exercise a discretion to have each or all supported and maintained with as large an allowance as would be beneficial and advantageous to them, and further that, if the whole income was not expended in its fourfold division, the accumulations should, at the end of the twenty-one years or sooner, be paid to such of the family group, who had been maintained, as the trustees should decide.

G. F. Shepley, K.C., for the Attorney-General.

J. J. Foy, K.C., for the trustees.

E. F. B. Johnston, K.C., for the beneficiaries.

BOYD, C.:—There is a plainly marked future period at which the estate is to be divided. Till then the income is to be applied for the maintenance of the children, and, if not all so applied, is to be accumulated for the benefit of the children at the end of twenty-one years. The scheme of the Succession Duties Act is to provide for a duty on succession to property by persons succeeding to estates or interests in property by testate or intestate title. The Act provides for the present payment of the duty on the present possession or enjoyment of the estate. In the case of future estates, the duty is not to be levied until the person shall come into actual possession by the determination of the prior estate for life or years. Here, there was a prior interest for life or years (according to the event in fact) in which the trustee (standing *in loco parentis*) was entitled to the present income of the property, and was to be so entitled until the time arrived when the corpus was to be divided. The trustee was not entitled to the beneficial enjoyment of this income, but the Act did not use the word "beneficial," though that was found in the new section substituted for sec. 11 (2) in 1901. The trustee, nevertheless, collected and held for the enjoyment and support of the beneficiaries, and the whole of each year's income might be so expended during or at the end of the 21 years. This share of testamentary disposition satisfied the meaning of the statute, that where there was a present enjoyment there