

# The Ontario Weekly Notes

VOL. VIII.

TORONTO, MARCH 19, 1915.

No. 2

## APPELLATE DIVISION.

MARCH 9TH, 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—Tenancy in Common—Predecease of one Sister—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.*

Appeal by the executor of the will of Philip Hislop, deceased, from the judgment of MIDDLETON, J., 7 O.W.N. 614.

The appeal was heard by FALCONBRIDGE, C.J.K.B., RIDDELL, LATCHFORD, and KELLY, JJ.

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

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

N. W. Rowell, K.C., for the executors of Janet Glover.

R. S. Hays, for David Hislop.

J. W. Graham, for Margaret Hislop.

KELLY, J.:— . . . The part of the will out of which the questions arise is the following devise: “To my brother John Hislop I leave the disposition of all my real and personal estate of which I may die possessed to be divided by him the said John Hislop according to his best judgment amongst my two brothers the said John Hislop and my brother David Hislop . . . and my three sisters, namely Margaret Hislop . . . Janet Glover . . . and Euphemia Moody . . .”