

ondly, that the case of *Thomas v. Hole* was a decision in point to govern that case. Now how, and when, and to what extent did the words 'next of kin' acquire any particular meaning distinct from their known legal meaning? That before the statute the meaning of those words was clear and intelligible, and that there was no difficulty in applying them, as they had been applied on former occasions and according to the language of Lord Coke, to the next in blood, there can be no doubt. How, then, did they acquire a different meaning; and how can that meaning be applied to an instrument which does not profess to relate to the Statute of Distributions—which does not profess to relate to an intestacy—but which, on the contrary, professes to point out the particular persons who are to take the property, and which, as it appears to me, indicates an anxiety not to leave any part of the settlor's property undisposed of? Do the words 'next of kin' imply that a distribution is to be made according to the directions of the statute, or are they to be construed 'next of kin' as described in the statute? That they do not imply a distribution according to the provisions of the statute is, I think, clear from this circumstance, that they do not extend to the wife; for it is not argued that they extend to the wife."

In the present case the testator has used the word heirs, but if he had used the term "next of kin" the case from which I have just quoted is an authority for saying that the widow would not have been included as there is no reference direct or indirect to the Statute of Distributions, and the words, therefore, have their ordinary meaning. *Halton v. Foster*, 3 Ch. App. 505 and *Withy v. Mangles*, 10 C. & F. 215 are to the same effect.

There is one other provision of the will which is opposed to the construction proposed on the part of the widow. The will directs that this property (real and personal) shall be equally divided by the trustees between the surviving sisters and brother and (not or) their respective heirs in equal proportions per stirpes and not per capita. It is clear that whoever is entitled as heirs to take the property are to take it in equal proportions. How can that apply to a widow who, if entitled at all, is entitled under the statutes to one-third of the whole. The words "in equal proportions per stirpes and not per capita," which are not apt words to use in reference to a widow's interest in her husband's personal property where he dies intestate, must be struck