

The testator died on the 24th April, 1906; his widow on the 15th March, 1916, intestate. No direction was made by her.

No question arose as to the first half. As to the second half, the question was, whether it should be divided among the widow's heirs, or among the heirs and next of kin of the testator.

The learned Judge said that, in his opinion, there was no lapse in respect to the second half of the estate. The gift was to a class, clearly and definitely designated. The fact that it was to be divided as she might direct did not annul the gift. The property should be divided among the members of the class equally, per capita, and the class should be ascertained at the date of the widow's death.

Reference to *Kingsbury v. Walter*, [1901] A.C. 187, 192; *In re Jones*, [1910] Vict. L.R. 306; *Shaw v. McMahon* (1843), 4 Dr. & War. 431; *Theobald on Wills*, 7th ed. (Can. notes), pp. 325, 738, 739, 787, 788; *Cole v. Wade* (1809), 16 Ves. 27; *Harding v. Glyn* (1739), 1 Atk. 468; *Brown v. Higgs* (1799-1803), 4 Ves. 708, 5 Ves. 495, 8 Ves. 561; *Burrough v. Philcox* (1840), 5 My. & Cr. 73; *Coatsworth v. Carson* (1893), 24 O.R. 185; *Stephens v. Beatty* (1895), 27 O.R. 75; *Wright v. Bell* (1890), 18 A.R. 25, reversed in *Houghton v. Bell* (1891), 23 S.C.R. 498; *In re Stone*, [1895] 2 Ch. 196; *Jarman on Wills*, 6th ed., vol. 2, p. 1711; *Re Bauman* (1916), 11 O.W.N. 55.

Order declaring accordingly; costs of all parties out of the estate.

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LATCHFORD, J.

APRIL 19TH, 1917.

\*JAMES RICHARDSON & SONS LIMITED v.  
GILBERTSON.

*Contract—Broker—Dealings in Grain for Customer—Speculation in "Futures"—Wagering Contract—Malum Prohibitum—Criminal Code, sec. 231.*

Action to recover \$1,287, the balance alleged to be due to the plaintiffs, grain merchants and grain brokers, in respect of the loss upon certain quantities of May wheat bought and sold for the defendant by the plaintiffs upon the Winnipeg Grain Exchange in February, 1916.

The action was tried without a jury at Toronto.  
B. N. Davis and H. C. Fowler, for the plaintiffs.  
W. Proudfoot, K.C., for the defendant.