

SCOTT ET AL., APPELLANTS.

SCOTT ET AL., RESPONDENTS.

1855.
May 10th.

Construction. — Nearest relations. — Half-blood. — Circumstances in which it was held (affirming the decision of the Court of Session) that a testator, in using the phrase “nearest relations,” meant to include children of his sister by the half blood.

The *Solicitor General* (a) and Mr. *Anderson* for the Appellants.

The *Lord Advocate* (b) and Mr. *Rolt* for the Respondents were not called upon.

The LORD CHANCELLOR (c):

*Lord Chancellor's
opinion.*

My Lords, I think the case now before your Lordships' House is one that admits of no doubt.

If indeed the words in the will had been merely that the testator gave the residue to his “nearest relations,” without more, no doubt the words would, according to the law of Scotland, mean those persons who would have taken in event of his intestacy. But here the question is not who would take in the event of intestacy, because the testator has been his own interpreter of what he intended.

It is plain that whatever the meaning of the term “nearest relations” may be in the abstract, it is here clearly and expressly to be understood that the children of the half-sister should be included, so as to give to the children of the brother as children of the full blood,

(a) Sir R. Bethell.

(b) Mr. Moncreiff.

(c) Lord Cranworth.

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and to the children of the half-sister as children of the half blood, equal shares. Whatever may be the meaning to be attached to the term "nearest relations" in the abstract, here the testator designates them as his nephews and nieces. The words that he makes use of are these, "to Hercules Scott, his only son, 3,000*l.*, and to each of his seven daughters the sum of 1,500*l.*, to Mrs. Isabella Robertson Scott, my sisten, 500*l.*, to each of my nieces Jane and Helen Robertson, her daughters, 300*l.*" He calls them both his nieces. He says, "to Mrs. Scott, my sister, 500*l.*," plainly intimating that he considered her as being in the same category with his brothers. "And in the event of the death of either of my said nieces both of these legacies to go to the survivor; to my nephew Captain George Robertson Scott 500*l.*; to my nephew Hercules James Robertson 300*l.*,"—and to three other nephews, naming them, 300*l.* each. And so he goes on calling them all nephews and nieces, as well those who were the children by the half blood as those who were the children by the whole blood.

Without, therefore, going further into the case, it seems evident that the testator has been his own interpreter of what he meant to do, and has shown clearly that by "nearest relations" he means those whom he has here designated as being his nearest relations, and whom he describes as being the children of his brother of the full blood, and the children of his sister by the half blood. I therefore move your Lordships that this interlocutor be affirmed, and the Appeal dismissed with costs.

The Lord ST. LEONARDS :

Lord
 St. Leonards'
opinion.

My Lords, as my noble and learned friend has told your Lordships, this is a simple question turning entirely upon the words of this will. The testator has

there told us that he considers his relations of the half blood equally with those of the full blood as his relations. Indeed, the expression he uses is rather more marked, perhaps, in the one case than in the other ; for in speaking of the children of the brother, he speaks of them as the children of his brother so and so, while in speaking of the children of the sister he speaks of them as his nephews and nieces. The simple question in this case is, whether your Lordships can possibly exclude those whom he has described in the plainest terms as relations of an equal degree with the others. I think the question is one that admits of so little doubt that it really involves nothing in the shape of argument, and therefore I agree with my noble and learned friend that the decision of the Court below should be affirmed with costs.

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Interlocutor affirmed with costs.

RICHARDSON, LOCH, AND MCLAURIN.