

51, 1930

LAW  
LIBRARY

No. 9 of 1930.

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF ONTARIO  
(Appellate Division).

IN THE MATTER of the LAST WILL AND TESTAMENT  
AND TWO CODICILS of THOMAS SAUNDERS HOBBS,  
late of the City of London, in the County of Middlesex, and  
Province of Ontario, Merchant, deceased.

10

BETWEEN—

HAROLD FERGUSON FISHLEIGH

*Appellant*

— AND —

20

THE LONDON & WESTERN TRUSTS  
COMPANY LIMITED, SAMUEL FRANCIS WOOD  
and JOHN WINER WARDROPE, Executors of the  
Will and Codicils of Thomas Saunders Hobbs,  
deceased, EWART FIELD, EVA FIELD HARVEY,  
ELIZABETH M. FERGUSON, RHODA HOBBS, EVA  
PUDDICOMBE, WINIFRED KINGSMILL, MARY  
EDWARDS, W. R. HOBBS, JOHN W. HOBBS, FRANK  
HOBBS, ELSIE MAY FISHER, BEATRICE DALTON,  
CONSTANCE BROWN, YVONNE WELD, MARY ANN  
LIND, NIGEL EDWARDS, IAN EDWARDS, CHARLES  
D'ARCY KINGSMILL and MARY KINGSMILL, the  
last four named being Infants under the age  
of twenty-one years - - *Respondents,*

AND BETWEEN—

EWART FIELD, EVA FIELD HARVEY, ELIZABETH  
M. FERGUSON, RHODA HOBBS, EVA PUDDICOMBE,  
WINIFRED KINGSMILL and MARY EDWARDS  
*Appellants*

— AND —

HAROLD FERGUSON FISHLEIGH, THE  
LONDON & WESTERN TRUSTS COMPANY LIMITED,  
SAMUEL FRANCIS WOOD and JOHN WINER  
WARDROPE, Executors of the Will and Codicils 10  
of Thomas Saunders Hobbs, deceased, W. R.  
HOBBS, JOHN W. HOBBS, FRANK HOBBS, ELSIE  
MAY FISHER, BEATRICE DALTON, CONSTANCE  
BROWN, YVONNE WELD, MARY ANN LIND, NIGEL  
EDWARDS, IAN EDWARDS, CHARLES D'ARCY  
KINGSMILL and MARY KINGSMILL, the last four  
named being Infants under the age of twenty-  
one years - - - - *Respondents.*

Consolidated Appeals.

---

---

## C A S E

20

FOR

**ELIZABETH M. FERGUSON, RHODA HOBBS and EVA  
PUDDICOMBE, Respondents in the First Appeal and Appellants  
in the Second Appeal.**

---

1. This is an appeal by Harold Ferguson Fishleigh from the judgment of the First Divisional Court of the Appellate Division of the Supreme Court of Ontario, dated the 20th day of September, 1929, by which the said Court varied the judgment of Mr. Justice

Middleton, delivered on the 31st day of March, A.D. 1928, determining certain questions arising under the Will of Thomas Saunders Hobbs submitted for the determination of the Court by the Executors under the said Will; and an appeal by Ewart Field, Eva Field Harvey, Elizabeth M. Ferguson, Rhoda Hobbs, Eva Puddicombe, Winifred Kingsmill and Mary Edwards from the same judgment. The judgment now appealed from declares that according to the true construction of the Will and Codicils in question there is an intestacy as to a one-fifth share of the income  
10 payable under the terms of the Will. As to the corpus of the estate, the judgment declares that the shares in the corpus have not vested and will not vest until the death of the last surviving sister of the testator, and until the youngest child born to any of them has attained his or her majority; and that until such shares have become vested the number of shares into which the estate is to be divided and the persons entitled thereto cannot be ascertained.

2. These Respondents in the First Appeal submit their rights to the protection of the Court.

3. These Appellants in the Second Appeal respectfully  
20 submit that the learned Judges of the First Divisional Court erred in declaring that the shares in the corpus of the testator's residuary estate have not vested and will not vest until the death of the last surviving sister of the testator, and until the youngest child born to any of them has attained his or her majority, and that until such shares have become vested the number of shares into which the estate is to be divided and the persons entitled thereto cannot be ascertained. These Appellants in the Second Appeal adopt and rely upon the case of the Appellants Ewart Field, Eva Field Harvey, Winifred Kingsmill and Mary Edwards, insofar as such case relates  
30 to the vesting of the shares in the corpus of the estate. As to the other questions raised on the Second Appeal, these Appellants submit their rights to the protection of the Court.

N. W. ROWELL.

DYCE W. SAUNDERS.

I. F. HELLMUTH.

**In the Privy Council.**

---

**ON APPEAL  
FROM THE SUPREME COURT OF ONTARIO  
(Appellate Division).**

---

**IN THE MATTER of the LAST WILL AND  
TESTAMENT AND TWO CODICILS of THOMAS  
SAUNDERS HOBBS, late of the City of London, in  
the County of Middlesex, and Province of Ontario,  
Merchant, deceased.**

BETWEEN

**HAROLD FERGUSON FISHLEIGH - Appellant**

— AND —

**THE LONDON & WESTERN TRUSTS COMPANY  
LIMITED, Samuel Francis Wood and John Winer  
Wardrope, Executors of the Will and Codicils of Thomas  
Saunders Hobbs, deceased, Ewart Field, Eva Field  
Harvey, Elizabeth M. Ferguson, Rhoda Hobbs, Eva  
Puddicombe, Winifred Kingsmill, Mary Edwards, W. R.  
Hobbs, John W. Hobbs, Frank Hobbs, Elsie May Fisher,  
Beatrice Dalton, Constance Brown, Yvonne Weld, Mary  
Ann Lind, Nigel Edwards, Ian Edwards, Charles D'Arcy  
Kingsmill and Mary Kingsmill, the last four named being  
Infants under the age of twenty-one years Respondents,**

AND BETWEEN

**EWART FIELD, Eva Field Harvey, Elizabeth M.  
Ferguson, Rhoda Hobbs, Eva Puddicombe, Winifred  
Kingsmill and Mary Edwards - - Appellants**

— AND —

**HAROLD FERGUSON FISHLEIGH, The London &  
Western Trusts Company Limited, Samuel Francis Wood  
and John Winer Wardrope, Executors of the Will and  
Codicils of Thomas Saunders Hobbs, deceased, W. R.  
Hobbs, John W. Hobbs, Frank Hobbs, Elsie May Fisher,  
Beatrice Dalton, Constance Brown, Yvonne Weld, Mary  
Ann Lind, Nigel Edwards, Ian Edwards, Charles D'Arcy  
Kingsmill and Mary Kingsmill, the last four named being  
Infants under the age of twenty-one years Respondents.**

Consolidated Appeals.

---

**C A S E**

— FOR —

**ELIZABETH M. FERGUSON, RHODA HOBBS and  
EVA PUDDICOMBE, Respondents in the First Appeal  
and Appellants in the Second Appeal.**

---

LAWRENCE JONES & Co,  
Lloyd's Building,  
3/4, Lime Street,  
London, E.C.3.