her life and at her death to go to her heirs-at-law subject to a power of appointment by will in her. A's daughter dying after the passing of the transfer tax law, devised the property in question in fee to her daughter, born before the death of A, and her only child. The surrogate imposed a transfer tax on the property. *Held,* that the will of A's daughter transferred nothing to her daughter that was not given to the latter by A's will, which took effect before the passing of the transfer tax law and consequently that the property and transfer were not subject to the tax. *In re Lansing's Estate* (1905), — N. Y. —, 74 N. E. Rep. 882.

An inheritance or transfer tax is one imposed on the succession to property, such succession being a privilege given by the state and not a natural right. *In re Dow's Estate,* 167 N. Y. 227, 60 N. E. 439; *United States* v. *Perkins,* 163 U. S. 625; *State* v. *Alston,* 94 Tenn. 674. A transfer tax cannot be imposed on the acquisition of property where the acquisition has taken place prior to the enactment of a taxing statute which contained nothing showing a direct intention to give it a retrospective effect. *In re Pell's Estate,* 63 N. E. 789, 171 N. Y. 48. The court did not agree on the point as to when the devisee's rights accrued. The majority of the judges held that the devisee, having a power of election to take either under her mother's appointment by will or under A's will, took under the latter an interest, either contingent or vested, in the estate on the death of A, which according to *Brevoort* v. *Grace,* 53 N. Y. 245 and *In re Vanderbilt's Estate,* 172 N. Y. 69, 64 N. E. 782, is immune from legislative attack the instant it accrues even though it be contingent. The dissenting judges held that the estate did not vest in the devisee on the death of A, *Hall* v. *LaFrance Fire Engine Co.,* 158 N. Y. 570, but only on the exercise by her mother of the power of appointment, which created a new estate, dating from the time that such appointment became effectual and governed by the laws then in force.

WILLS—CONSTRUCTION—MEANING OF "FAMILY" AND "CHILDREN"—BEQUEST TO A CLASS.—Testator gave his widow a life estate with a remainder over to be disposed of as follows: "The whole estate both real and personal shall go to and be distributed or divided equally among the children of my two sisters and my brother, each of the above families to share equally, to have one-third of my property, both real and personal." At the time the will was executed both sisters were dead. The family of one consisted of four children living, and a grandchild, the petitioner, daughter of a deceased son. The other sister left eight children surviving. The petitioner claimed to be included among the children by the use of the word "family" which she maintained showed an intention on the part of the testator to include her in the bequest, she being a member of his household at the time the will was executed and his especial favorite. *Held,* (1) that the children took as a class, and (2) that the word "family" did not show an intent to include a grandchild among the children. *Fulghum* v. *Strickland* (1905), — Ga. —, 51 S. E. Rep. 294.

This bequest was peculiar in that it was neither to the "children" nor "families" directly, but to sets of children according to families. The court says that it was unable to find a single case of a like nature. It is well

settled that the word "children" will not include grandchildren except in two cases: (1) where the will would otherwise be inoperative, and (2) where the testator evidently intended that it should. *In re Fisher's Estate,* 13 Phila. 401; *Walker* v. *Williamson,* 25 Ga. 549; *Thompson* v. *Ludington,* 104 Mass. 193; *Pugh* v. *Pugh,* 105 Ind. 552, 5 N. E. Rep. 673; *Marsh* v. *Hague,* 1 Edw. Ch. 354. The petitioner admitted the general rule to be as above stated, but attempted to bring the case within the second exception on account of the use of the expression "each of the above families." In overruling this contention the court held this to be merely an indication of the testator's general scheme of distribution. This seems to be in accordance with reason if not authority. The word "family" is one of loose and flexible meaning, depending largely upon the intent of the testator. 2 UNDERHILL, WILLS § 585, but the instances where it has been construed to mean grandchildren are comparatively rare. In England it has been held to mean primarily children. *Pigg* v. *Clarke,* 45 L. R. Ch. 849; *In re Muffet,* 55 L. T. 671; *Wood* v. *Wood,* 3 Hare 65; *Parkinson's Trusts,* 1 Sim. (N. S.) 242; *In re Battersby's Trusts,* [1896] 1 Ir. Rep. 600. So in Massachusetts where a bequest was made to testator's family consisting of a son and daughter, the son's child did not take. *Townsend* v. *Townsend,* 156 Mass. 454. See also *Whelan* v. *Reilly,* 3 W. Va. 610; *Dominick* v. Sayres, 5 N. Y. Super. Ct. (3 Sandf.) 555. A case tending the other way is *Osgood* v. *Lovering,* 32 Me. 464, where a grandchild who had been specifically mentioned in the will was allowed to take, in spite of a subsequent codicil directing that the estate be held in trust for the family for ten years and then distributed among the children.

WILLS—ELECTION—DOWER.—Testator bequeathed to his son one-tenth of his estate, to each of three daughters one-tenth, and the remaining six-tenths he gave to his wife for life, with a remainder over to certain other children. The wife elected to take her dower. A statute (Code § 3279) provides that the amount allowed in settlement of any claim in disregard of or opposition to the terms of the will must be taken ratably from the interest of heirs, devisees and legatees. *Held,* that the widow's dower was a claim within the meaning of the statute and should be taken from the entire estate, the other devisees sharing the remaining two-thirds equally. *Dillavou* v. *Dillavou* (1905), — Ia. —, 104 N. W. Rep. 432.

Previous to the decision of this case the rule in Iowa has been as laid down in *Hoskins* v. *Hoskins,* 43 Ia. 452, that the widow's dower should be deducted from the share set aside for her in the will. In the Hoskin's case which was cited and relied upon by the contestant in the principal case, the estate was divided into moieties, one of which was given in fee to one daughter, the other to the widow for life with a remainder over to another daughter. The widow having elected to take her dower, the court held that it should be deducted from the moiety given to her in the will, and that the moiety given to the first daughter should not contribute. This was on the ground that the testator evidently intended to discriminate between the daughters. Aside from the fact, which the court in the principal case says was manifestly overlooked, that the statute governs absolutely, it is difficult