

for the advice of the Court as to whether upon the true construction of the will of the deceased it was the duty of the executors after the death of the testator's sister Christiann Bolls, to convey certain lands in fee to her daughter Mary Bell Bolls (now Mary Bell Beaton), or, to hold such lands until the death of Mrs. Beaton in order to ascertain to whom such lands should then be conveyed.

G. N. Weekes, for the motion.

J. M. McEvoy, for county of Middlesex.

John C. Elliott, for township of Lobo.

HON. MR. JUSTICE LATCHFORD:—The will of the testator, a retired farmer, was made July 2nd, 1881. He signed it by his mark in the presence of two witnesses, one described as a farmer, the other as a gentleman. There is no direct evidence of the circumstances attending the making of the will. McDonald died November 24th, 1881, and probate was duly granted to the executors named in the will, on December 3rd, 1881.

The will devised the lands in question to the executors "in trust to be managed or rented by them as best they may," and the net proceeds were to be paid yearly and every year to the testator's sister Christiann Bolls during her natural life. The will then proceeds: "After the death of my sister the surplus . . . from said farm to be paid yearly by my executors to my sister's daughter Mary Bell Bolls, if alive, during the term of her natural life, or if she has family legally begotten then the said farm to be given by my executors to the said Mary Bell, but provided she, the said Mary Bell, dies without having any lawful heirs, then my executors to give up the management of said farm to the township council of the township of Lobo and their successors in office to be managed or sold, and if sold the proceeds to be invested and the interest or rent to be applied for the benefit of the poor in the county of Middlesex's house of refuge or house of industry near the town of Strathroy."

At the date of the testator's death, as at the date of the will, Mary Bell Bolls was unmarried. It was obviously present to the mind of the testator that upon the death of the life tenant, her daughter might be: 1st. Living and unmarried; 2nd, dead without lawful issue; 3rd, living and having lawful issue. Only in the second event could the