

receive one-half the proceeds, which is one-half the rents, minus insurance, interest on mortgage, etc.; and, according to that, I do not think the present arrangement is quite right. I have lived up to my side of the agreement, and I feel uncle T. A. should live up to his, and I *am still entitled to one-half the proceeds.*

"You say uncle T. A. will continue to give me \$600 as at present; well, at present and since the fire, I have only been getting \$560, so he cannot continue to give \$600 when it has only been \$560.

"Because the property has increased in value, I am most assuredly entitled to the benefit of that increase, as well as uncle T. A. I only ask justice. . . .

"Since the fire I have still been entitled to the one-half, and I have not received it, so I wish you to put this before uncle T. A. . . ."

This letter it is now sought to treat as an abandonment of the interest in the Bay street property, in consideration of the provisions suggested by the letter of Mr. Hillock.

I do not think this is the true meaning of the letter. It was not so understood by Mr. Hillock, according to his testimony at the trial, nor was any formal agreement or conveyance drawn up. Moreover, the will executed by Mr. T. A. Snider on the 2nd July, 1909, makes the legacy to the niece conditional upon her making no claim against his estate in respect of any property of her father, whether in respect of No. 78 Bay street or otherwise. In the event of any claim being made, she is to forfeit all interest, even though the claim is unsuccessful. This indicates that at that time Mr. Snider did not regard his niece's claim as extinguished.

Two issues were raised at the trial: first, as to the interest of Mrs. Carlton in the Bay street property; secondly, whether upon the construction of the will she is put to her election.

On the first issue, I think that Mr. Irwin's letter of 1900 governs. Mrs. Carlton is entitled to a half-interest in the Bay street property, subject to one-half of the amount due upon the trust company's mortgage. The letter indicates an intention of the uncle to give her then a half interest in the property as it then stood, and not to make any claim against her for reimbursement for the improvement the uncle had then made.

There is some question as to accounting, as Mrs. Carlton claims not to have received the entire half of the income. The accounts have been well and accurately kept by Mr. Hillock, and this matter can be adjusted before the judgment issues. If there is any difficulty I may be spoken to about it.