

apart of one-third of the land by metes and bounds as to necessitate an election by the widow as to whether she would take her dower or the benefits given to her: *Patrick v. Shaver* (1874), 21 Gr. 123; *Armstrong v. Armstrong* (1874), 21 Gr. 351. The case of *Parker v. Sowerby* (1853), 1 Drew. 488, was followed in *Patrick v. Shaver*. Any argument based upon *Warbutton v. Warbutton* (1854), 2 Sm. & G. 163, was met by the fact that that case was cited upon the appeal in *Parker v. Sowerby* (1854), 4 DeG. M. & G. 321, and not followed—indeed treated as overruled by the *Parker* case: see 97 R.R. 147; *Patrick v. Shaver*, at p. 126.

This disposed of the question as to the lands which the testator did not himself agree to sell—aliter as to the lands which he had agreed to sell. The executors had no power of leasing these lands; and the legal estate continuing in the testator until the time of his death, there was nothing to exclude the widow's right to dower—she was not a party to the agreements for sale.

As to what portion of the moneys realised by the executors upon sales made by them was to be treated as capital and what portion as income, there was an agreement among the parties, and there should be a declaration in accordance therewith.

It was also agreed that the widow and two other legatees were entitled to payments of income for the year immediately succeeding the death of the testator, and there should be a declaration accordingly.

Costs of all parties to be paid out of the estate.

MIDDLETON, J.

OCTOBER 2ND, 1919.

RE GORDON AND GORDON

*Husband and Wife—Separation Agreement—Alimentary Allowance Made to Wife—Provision for Decrease or Increase—Application to Judge—Appointment of Arbitrator—Arbitration Act, R.S.O. 1914 ch. 65, sec. 9.*

Motion by Edna Gordon, under the provisions of the Arbitration Act, R.S.O. 1914 ch. 65, sec. 9, for an order appointing an arbitrator to act under the terms of a separation agreement dated the 20th January, 1913, between the applicant and her husband.

The motion was heard in the Weekly Court, Toronto.

W. C. Mikel, K.C., for the appellant.

G. Hamilton, for the husband.