

APPELLATE DIVISION.

FIRST DIVISIONAL COURT.

JULY 12TH, 1916.

*RE KIRKLAND.

Will—Trust—Royalties from Sale of Books of Deceased Author—Life-tenants and Remaindermen — Apportionment between Capital and Income—Unmarketed Company-shares—Apportionment of Proceeds when Sale Effected.

Appeal by Agnes S. Gilchrist and Josephine Thornton, the life-tenants, from the judgment of MIDDLETON, J., ante 226.

The appeal was heard by GARROW, MACLAREN, MAGEE, and HODGINS, J.J.A.

J. Gilchrist, for the appellants.

Hamilton Cassels, K.C., for the Toronto General Trusts Corporation, the trustees under the will of Jane Todd Kirkland.

F. M. Gray, for Knox College Ministers' Widows and Orphans Fund.

E. C. Cattnach, for the Official Guardian.

HODGINS, J.A., read a judgment in which he said that clause 2 of the will of Jane Todd Kirkland dealt with what she left as her own individual estate. She included what had been derived from income from her husband's estate, paid to her and not expended. This income was, therefore, money reduced into her possession, and it became in the hands of her executors part of the principal or corpus of her estate.

Clause 3 dealt by way of appointment with the rest of her husband's estate which she had not consumed. If there were accruing interest on mortgages or accruing dividends on stock, these would be included as part of the "residue of (her husband's) said estate," as to which she exercises her power of appointment. In the same way, the moneys arising out of the agreements between her husband and his publishers, even if similar payments had been treated as income during his life or her life, became after her death vested in the trust company under her appointment upon a trust to set apart and invest.

The case of Davidson's Trustees v. Ogilvie, [1909-10] Sess. Cas. 294, was not helpful.

The sums payable under the agreements represented the value