

## HIGH COURT DIVISION.

ROSE, J.

FEBRUARY 17TH, 1919.

RE CLEGHORN.

*Will—Construction—Trust for Maintenance of Dwelling-house as Home for Widow and Daughters—Payment to Widow of Lump-sum in Lieu of Dower—Election—Sale of House—Residuary Devise—Rights as to Occupancy of House.*

Motion by the executors of the will of T. H. Cleghorn, deceased, for an order declaring the construction of the will.

The motion was heard in the Weekly Court, Toronto.

John Jennings, for the executors.

H. J. Scott, K.C., and E. F. Coatsworth, for the widow of the testator.

J. J. Maclellan, for the daughters.

ROSE, J., in a written judgment, said that the testator by his will (made in 1913) left all his property to his executors in trust, and directed them to realise his estate and apply the proceeds in first paying off any mortgage upon his dwelling-house, and then dividing the surplus in equal shares amongst his wife and his three daughters. He expressed a wish that his three daughters, if unmarried or widows, should make their home with the widow in the house, which the executors were to hold in trust and maintain and permit the "wife and daughters to occupy the same so long as they shall all desire to do so." At the time when the will was made, one of the three daughters was married; another married afterwards in the testator's lifetime; the third was still unmarried. By the will, the testator further provided that his wife should have the right to occupy the house with the unmarried or widowed daughters in any event for two years after his death; and if, at the expiry of the two years, the wife and daughters did not desire to live together in the house, then, upon payment by the daughters to the wife of \$2,500, the house should be held by the executors for the daughters free from any right of dower of the wife. Directions were then given for occupancy by the daughters in the event of the payment to the wife. Then followed certain specific bequests, and then a direction to divide all the residue of the estate among the daughters, share and share alike.

The testator died on the 1st March, 1917. Since his death, the widow had occupied the house alone, the unmarried daughter