

HIGH COURT OF JUSTICE.

RIDDELL, J.

NOVEMBER 24TH, 1911.

*RE RALLY.

Will—Construction—Legacy of Specific Sum of Money in Hands of Third Person—Debt Owing to Testatrix—Payment of Debt before Death of Testatrix—Lapse of Legacy—Petition for Advice of Court—R.S.O. 1897 ch. 129, sec. 39(1)—Scope of—Petition Changed into Motion under Con. Rule 938(a)—Practice.

Petition by the executor of the will of Isabella Rally, deceased, for the advice of the Court as to whether a certain legacy given by the will had lapsed.

D. L. McCarthy, K.C., for the executor and next of kin.
Shirley Denison, K.C., for Charles Rally, the legatee.

RIDDELL, J.:—The late Isabella Rally, about the 1st September, 1899, made a will, giving to each of three nieces named "an equal share of all my ready money securities for money and household furniture." Thereafter, and about the 18th June, 1900, she made another will, containing the following: "I give and bequeath to Charles Rally the son of my step-son William A. Rally . . . the sum of five hundred dollars being the amount of money now in the hands of the said William A. Rally belonging to me and not secured by mortgage it being my intention to devise that specific money to be paid by the said William A. Rally to the said Charles Rally."

At the time this will was made, William A. Rally owed Isabella Rally the sum of \$500 for money advanced by her to him, and this was not secured by mortgage. Afterwards she demanded payment of all the money William A. Rally owed her, and the same was repaid her, so that at the time of her death William A. Rally owed her nothing.

Before the repayment of these sums, she had to her credit in the bank \$240.37; these sums, being also deposited, raised the deposit to \$1,442.12. She then invested from this money \$800 upon a mortgage, which was outstanding at the time of her death. Her bank account was kept up, and at no time shewed a credit of less than \$600, and at the time of her death it stood at \$1,097.83.

She died on the 15th February, 1911.

Charles Rally demands the payment to him of the sum of \$500; and the executor files his petition and requests "to be advised if, in the opinion of this Court, the said legacy has lapsed

*To be reported in the Ontario Law Reports.