

MIDDLETON, J.

DECEMBER 17TH, 1919.

## \*RE BICKNELL.

*Will—Provision for Daughter—Gift Made to her upon her Marriage in Lifetime of Testator—House Property Conveyed Subject to Mortgage — Advancement — Ademption — Presumption — Obligation of Estate to Exonerate Property from Mortgage—Company-shares Held by Testator—New Shares Issued in Lieu of Dividends—Whether Income or Capital—Question of Fact.*

Motion by the executors and trustees under the will of James Bicknell, deceased, for the advice and direction of the Court upon certain questions arising in the administration of the estate.

The motion was heard in the Weekly Court, Toronto.

C. Kappelé, for the executors.

T. N. Phelan, for Mrs. Keachie, a daughter of the testator.

W. Lawr, for Mrs. Robertson, another daughter.

James W. Bicknell, son of the testator, in person.

F. W. Harcourt, K.C., for the infant grandchildren and unborn issue of the children of James Bicknell.

MIDDLETON, J., in a written judgment, said that the testator died on the 22nd October, 1914, leaving a widow and three children. The will, which was duly admitted to probate, was dated the 28th June, 1912. By it, after certain minor provisions, he demised and bequeathed the residue to his executors in trust to convert into money, to invest the money, to pay out of the income certain legacies not now important, and to divide the balance of the income into four shares, one of which was to be paid to his wife during her lifetime and one to each of his three children. The corpus of his estate was to be divided into four equal shares, one share being identified as the share of his wife, and upon her death this share was to be equally divided among his children her surviving and the issue of any deceased child. The other three shares were to be identified as belonging respectively to each of the three children; and, subject to certain powers of advancement, the capital set apart for each child upon his death without issue was to be divided among the surviving children; but, if the child left issue, it was to go to the issue of the child.

No difficulty arose upon the construction of the will, but a question arose by reason of the fact that on the 18th March, 1913, a year after the making of the will, on the occasion of the marriage of one of the daughters, the testator bought a house for