

The
Ontario Weekly Notes

VOL. VI.

TORONTO, MAY 8, 1914.

No. 9.

APPELLATE DIVISION.

MAY 1ST, 1914.

RE ROBERT GEORGE BARRETT.

Will—Construction—Devise—Sale of Lands Devised between Date of Will and Death of Testator—Mortgage Taken for Part of Purchase-money—Claim of Devisees to Mortgage—Conversion—Bequest to Daughter of Moneys in Hand or Bank at Time of Decease for Current Housekeeping Expenses—Large Fund in Bank—Absolute Right of Legatee to whole Fund.

Appeal by the three unmarried daughters of Robert George Barrett, deceased, from the order of MIDDLETON, J., 5 O.W.N. 805.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A.

W. N. Tilley, for the appellants.

I. F. Hellmuth, K.C., for the testator's sons.

F. Arnoldi, K.C., for the testator's married daughter.

H. S. White, for the executors.

The judgment of the Court was delivered by MEREDITH, C.J.O.—As to the first question, i.e., the devises contained in paragraphs 12, 13, and 14 of the will, we are of opinion that we should follow the decision of the Court of Appeal in *In re Clowes*, [1893] 1 Ch. 214; and, we being of that opinion, the first ground of appeal fails.

The second and remaining question is as to the effect of paragraph 26 of the will, which reads as follows: "I hereby give to my daughter Sarah Frances Barrett whatever sum or sums of money may be to my credit in any bank or upon my person or in my domicile at the time of my decease for the purpose of en-