

SINGLE COURT, CORNWALL.

HON. MR. JUSTICE BRITTON.

OCTOBER 31ST, 1913.

RE JOHN OUDERKIRK.

5 O. W. N. 191.

*Will—Construction of—Provision for Widow—Claim of Dower by—Presumption against — Election—Annuity to Widow—Lien on Whole Estate for — Right to Resort to Corpus for Arrears—Gift to Infant Beneficiary — Discretion of Executors as to Income.*

BRITTON, J., *held*, that where there is such reasonable provision made by a testator for his widow as warrants a strong inference that such provision was intended to be in lieu of dower, the widow is put to her election.

*Re Hurst*, 11 O. L. R. 6, distinguished.

Application by the executors for the construction of the will of the late John Ouderkirk and for the opinion and advice of the Court upon certain matters connected with the estate.

The deceased made his will on the 26th day of November, 1910, and died on the 18th day of February, 1911.

He left an estate of the total value of about \$6,500.

His widow, Jessie Ouderkirk, is 42 years of age, and was the second wife of the testator.

The youngest child, Mildred, is the only child of the widow Jessie, and Mildred is an invalid and has been so from her birth.

The will, except the formal part, is as follows:

"I direct all my just debts, funeral and testamentary expenses to be paid and satisfied by my executors hereinafter named, as soon as conveniently may be after my decease.

I give, devise and bequeath all my real and personal estate of which I may die possessed or entitled to in the manner following, that is to say:

"To my wife, Jessie Ouderkirk, my house and lot in the village of Berwick so long as she remains my widow, also the sum of two hundred dollars per annum, payable every six months, so long as she remains my widow, said sum of two hundred dollars shall be a lien on the value of my estate.

"To my son, Simon Ouderkirk, the sum of one thousand dollars absolutely.