

but she might spend it and she might use the furniture and enjoy the leaseholds in specie."

The same reason in this case extends to the use of the notes and mortgages—not absolute and unlimited, but having regard to the need of the widow. The testator does not contemplate the disposition of all the funds available for legacies, but some diminution of it, which is in reason and good sense to be measured and controlled by the executor. The testator speaks of "funds" in the popular sense of assets presently available for the payment of legacies and in this instance to be drawn first from the money in hand, then from the notes as they fall due; and then from the mortgages which run for some years. These funds may be drawn upon for the necessities of the widow as already indicated.

A Nova Scotia case deserves mention, *Re McDonald* (1903), 35 N.S.R. 500. Testator gave his wife all the estate for her own use during her lifetime. At the death of the wife he gave the house and contents to another for life, and to his nephews thereafter, as well as any money or securities which may remain "after the death of wife."

It was decided by Townsend, J., and affirmed by Justices Ritchie, Graham, and Meagher, that the wife was entitled to more than the income and had a right to use a part, if not the whole of the principal. And the question submitted was approved of, viz., that if the income was insufficient for the maintenance and support of the widow, the executors would be justified in allowing her as much out of the principal or the personal property as may be necessary therefor.

That case appears to be singularly like this, and though not an authority in this Province is a valuable exposition of the law: See also *Re Tuck*, 10 O.L.R. 309.

With this variation of the judgment the matter will be left in the hands of the executors to deal with as now indicated. Costs of appeal out of estate.

LATCHFORD and MIDDLETON, JJ., concurred.