in 1911, and at the time of his death it stood at $3,000 and interest. It had since been paid off by his executors.

It was held by Latchford, J., that this mortgage could not be charged against James E. Thompson's share in the estate; also that the estate was to be divided into four parts, of which the fourth part, devised to J.E.T., was to be $5,000 less than each of the other parts.

The appellants in the main appeal contended that the amount of the Spence mortgage was to be deducted. The cross-appeal was directed to the division of the estate.

There was nothing to prevent the application of sec. 27 (1) of the Wills Act, the section declaring that the will speaks from immediately before the death of the testator, unless a contrary intention appears by the will. The fact that when the will was executed there was a mortgage upon the real estate of the testator which had since been discharged, though in fact replaced by another, was relied upon.

Reference to Douglas v. Douglas (1854), Kay 400, 404, 405; Goodlad v. Burnett (1858), 1 K. & J. 341; In re Gibson (1866), L.R. 2 Eq. 669; Re Atkins (1912), 21 O.W.R. 238, 3 O.W.N. 665; Morrison v. Morrison (1885), 9 O.R. 223, 10 O.R. 303; Hatton v. Bertram (1887), 13 O.R. 766; In re Holden (1903), 5 O.L.R. 156; In re Portal and Lamb (1885), 30 Ch. D. 50; Re Ashburnham (1912), 107 L.T.R. 601; Cave v. Harris (1887), 57 L.T.R. 768; Dickinson v. Dickinson (1878), 9 Ch. D. 667, 672; In re Evans, [1909] 1 Ch. 784; Halsbury's Laws of England, vol. 28, p. 692.

The words of the will in this case, "the mortgage upon my real estate," while in one sense describing the charge then existing, conveyed nothing in themselves clearly excluding another mortgage if substituted for it. The expression could be as accurately applied to the mortgage in esse at the testator's death as to the incumbrance at the time he made his will. Nothing compelled the conclusion that he intended that mortgage and that mortgage alone to be paid off. "Mortgage" means "debt secured by mortgage," and is generic in the same sense as "stock of goods" in In re Holden, supra. There was nothing indicating "a contrary intention."

As to the cross-appeal, no other conclusion than that reached by Latchford, J., was possible.

Appeal allowed with costs and cross-appeal dismissed with costs.