

the judgment; and (2) the appeal must involve matters of such importance that, in my opinion, leave to appeal should be given.

It will be seen that the first prerequisite is not the same as that appearing in the Ontario Judicature Act, sec. 81 (2), referred to in *In re Shafer*, 15 O. L. R. 266, 273, the word "deem" being used in this section. But I am not able to go even so far as is necessitated by the Rule—I cannot say that there is good reason to doubt the correctness of the judgment. I do not think it at all necessary that I should go into an elaborate discussion of the facts or the cases.

The motion will be dismissed with costs to the defendants Randolph in any event of the action as in *Robinson v. Mills*, 19 O. L. R. 162.

CLUTE, J.

NOVEMBER 23RD, 1909.

RE PADGET.

Will—Construction—Devise of Farm—Life Estate—Annuity Payable by Devisee—Charge Limited to Life of Devisee.

Motion for order declaring the construction of the will of John Padget, deceased.

The testator devised all his real and personal estate to his executors in trust, directing them, at such time as the interest of his estate would permit, to convey the real estate to his sons therein named, subject to the conditions and obligations therein expressed. He then devised to his son James Charles certain described lands, "subject, however, to the following conditions and obligations, that is to say, the said son James Charles shall pay to his mother each year, at such time or times as my said executors shall appoint, the sum of \$100 during her lifetime; that he, my said son James Charles, shall not and is hereby restricted from, at any time during his lifetime, incumbering . . . the said above described real estate, but he may farm or rent the said farm property . . . provided, in the event of my said son James Charles dying without lawful issue, the above described farm shall become the property of my son Alexander, . . . but, in the event of my son James Charles leaving issue, the above farm shall pass to his children unclouded by condition of title. . . . To my wife I give and bequeath the sum of \$200 in lieu of dower to be paid to her yearly during her lifetime by my sons as hereinbefore directed, together with one-half of the household furniture," etc.