

not stated, but it was shewn that the executor had paid \$699.98 for debts and legal expenses out of the proceeds of the sale of the west quarter of lot 35, which was sold by the executor, with the approval of the official guardian, for \$3,100, and had also paid thereout \$2,108.75 upon the \$2,700 mortgage, leaving a balance of \$291.27. John G. Foster, the devisee of the north half of 34, gave the executor a bond to repay any part of the sum paid on the mortgage which a Court should declare him liable to pay. W. R. Foster, the devisee of the other lot, died intestate on the 21st March, 1900.

L. A. Smith, Ottawa, for the executor and the administrator of the estates of W. R. Foster and Isabella H. Foster.

J. Lorne McDougall, Ottawa, for John G. Foster.

C. J. R. Bethune, Ottawa, for infants.

N. Sparks, Ottawa, for other adults.

STREET, J., held that by the Wills Act the real estate devised to W. R. Foster and J. G. Foster must, in the absence of the expression of a contrary intention in the will, be taken to have been devised subject to the payment of the mortgage debts upon it, each portion according to its value bearing a proportionate part of the whole of such debts; and a general direction that the testator's debts shall be paid out of his personal estate is not to be taken to be the expression of such contrary intention unless mortgage debts are expressly included in such direction. No contrary intention is to be found in this will. The two sons (the devisees) of the testator are directed to work together until all his just debts are paid. This is, in substance, a direction to them to pay his debts, and, coupled with the devise to them of a farm each, it creates a charge upon the farms of his just debts. That language was evidently intended to cover the debts other than the mortgage debts, and the result is, that testator has devised to each son a farm charged not only with its proportion of the mortgage debts, but with its proportion of his ordinary debts. The debts are to be charged upon the two parcels in proportion to their respective values. The price at which the west quarter of 35 was sold will be a guide as to its value, and the parties may be able to agree as to the value of the other lot, and so save the costs of a reference.

Costs of all parties of this application to be borne by the parcels in the same proportion as the debts. Costs of reference (if any) reserved, and any party insisting on a reference will do so at the risk of costs.