

3. Have these two annuitants respectively any right to disposition of such annuities or of capital funds from which the said annuities arise after their deaths respectively, or do the said annuities terminate upon the death of them respectively?

4. Is Katharine, as residuary devisee and legatee under the will of the deceased, entitled to the real estate referred to in the will as in the occupation of Harry or to the price or proceeds of the sale or setting apart thereof to or for him, as provided for in the will?

5. And is she entitled to the rents which have been paid by him for the said real estate from the time of the death of the testatrix?

The motion was heard in the Weekly Court at Toronto.

G. H. Sedgewick, for the executor and trustees.

H. E. Rose, K.C., for Katharine E. Handcock.

Grayson Smith, for Harry B. S. Palmer and Thomas L. Palmer.

A. W. Langmuir, for A. L. Palmer and Mrs. Clara Kelly.

THE CHANCELLOR answered the first question, "Yes."

To the second question he answered that the annuities to Harry and Thomas are payable out of such annuities as fall in from time to time, and are not chargeable against the estate generally.

In regard to the third question, the Chancellor said that the added clause, "At the death of each of them respectively his annuity shall be disposed of as he shall by deed or will appoint," was repugnant to the gift for natural life; and the explicit limitation in time was not controlled and overruled by these subsequent words. The third question should be answered by saying that the annuities terminate on the death of the sons.

The fourth question is answered by saying that Katharine is entitled to the real estate in Muskoka as residuary legatee and to the rents derived therefrom since the death of the testatrix—on the assumption that the trustees have not thought fit to acquire that estate as an investment for the son Harry.

The fifth question is answered by the fourth.

Order accordingly; costs out of the estate.