

effect of the will, arising in the administration and distribution of the estate.

The motion was heard in the Weekly Court, Toronto.

Charles Swabey, for the executors.

W. G. Thurston, K.C., for the widow of the testator and for Sarah Wolfe.

H. S. White, for Grace Bown and other adults in the same interest.

E.C. Cattanach, for John W. Wilkinson, Sydney Webb, Frederick Bown, Thomas N. Bown, and for the Official Guardian appointed to represent the unborn children of Grace Bown.

ROSE, J., in a written judgment, said that the estate consisted chiefly of lands, some of which the testator had agreed to sell in parcels and the remainder of which he was endeavouring to sell. A large portion of that remainder had been sold by the executors. There was a small amount of cash, some investments, and a dwelling-house. The testator gave legacies amounting to \$2,050; one legacy was \$1,000 to his widow. The rest of his estate he gave to his executors in trust: (1) to permit the widow to occupy and use the dwelling-house with its contents during her lifetime, the estate keeping the house in repair and paying the taxes and insurance premiums, and upon her death to convey the house and its contents to Frederick Bown; (2) to call in and convert into money all the residue of the estate, real and personal, and to divide the proceeds into 40 equal shares and to hold these shares upon trust to pay to the widow the income from 14 of them and to pay to various named legatees the income from certain others, with provisions for the distribution of the shares after the deaths of the persons to whom the income was made payable. The executors were authorised to postpone the sale of any part of the real estate for such time as they should in their discretion think proper, and, pending the sale, "to lease, let, and manage the same in such manner and upon such terms as they shall think proper."

The learned Judge was of opinion that there was nothing in the will, except the power to lease, let, and manage, to indicate an intention to exclude the widow from or to shew that the gifts to her were in substitution for dower: *Re Hurst* (1905), 11 O.L.R. 6; *Re Williamson* (1916), 11 O.W.N. 142; *Leys v. Toronto General Trusts Co.* (1892), 22 O.R. 603.

As to the power to lease, let, and manage, the learned Judge felt the difficulty expressed in *Laidlaw v. Jackes* (1877), 25 Gr. 293; but thought he was bound by the cases to hold that the testator, by giving this express power to the executors, authorised them to do something which was so inconsistent with the setting