

from the opening words of clause 5 of her will. Effect can be given to her intention as expressed in that clause. That intention was, that in the event of her selling the property in her lifetime—which event happened—her trustees should, out of her moneys and investments, set apart the sum of \$2,000, the income of which should be paid to her sister Charlotte for life. After Charlotte's death the fund was to be equally divided between the two nieces of the testatrix. Locke King's Act, sec. 37 of R. S. O. 1897 ch. 128, has no application. The clause of the will directing the executors to sell the Kingston property could not come into effect when the property was sold in the lifetime of the testatrix, and the mortgage which existed on that property may be disregarded. The testatrix did not die seised of the Kingston lands.

The testatrix doubtless expected that the proceeds of the sale would exceed \$2,000. She refers to \$2,000 "as a portion of the proceeds of such sale;" but that expectation and reference cannot, I think, be held to cut down the clear and unqualified direction that the executors shall set aside and invest the sum of \$2,000 for her sister and nieces, especially as that sum is to be taken out of her "ready moneys and investments for money." Besides, the proceeds of the sale are nearly \$2,000, and they exceed that sum if the commission is not deducted from the price realised.

There will be an order that, upon a proper construction of the will, the executors are, out of the moneys and investments of the testatrix, to set aside and invest the sum of \$2,000 in the manner and for the benefit of the persons named in clause 5 of the will. There is no "balance of proceeds" of the sale and conversion of the Kingston property of which the trustees can stand possessed for the benefit of the children of the nieces, Mrs. Smith and Mrs. Seeley.

Costs of all parties out of the estate, the costs of the executors as between solicitor and client.