

case and others, including a very recent case of *Re Watson and City of Toronto*, in the Appellate Division, 11 O.W.N. 111.

With much reluctance, the learned Judge dismissed the appeal, and with costs.

MIDDLETON, J.

DECEMBER 18TH, 1916.

RE LOCKER.

*Will — Construction — "Nearest Heirs" — Ascertainment — Evidence — Incompleteness — Notice.*

Application, upon originating notice, by the executor of one Locker, deceased, for an order determining certain questions as to the construction of the will.

The motion was heard in the Weekly Court at London.

W. C. Brown, for the executor.

G. S. Gibbons, for the widow.

MIDDLETON, J., in a written judgment, said that the testator gave his lands to his wife for life, and "at her death to my nearest heirs that are alive at her death." The testator died on the 18th December, 1915, leaving a widow but no children. On the argument it was said that he left as his heirs a half-sister and a brother, but that both were now dead; the half-sister left no issue, and the brother left children, all of age.

The learned Judge's view was, that there was a gift to the testator's heirs, i.e., to those who were his heirs at his death, contingent upon their surviving the widow, and an intestacy as to the remainder, which would result in vesting the estate in the heirs (in the events that had happened); and, if the half-sister died intestate, and the brother also died intestate, would vest in the brother's children the remainder expectant upon the life estate, so that a fee simple might be conveyed.

But, unfortunately, the facts did not seem to be as stated. The half-sister was not mentioned in the papers, and it was shewn that there were two children born to the testator's mother and two to his father by earlier marriages (one, no doubt, the half-sister), and all that was said was, "Some of the children as aforesaid or their heirs are now living." It was not said that the half-sister and the brother died intestate. This was probably the case, but it should be shewn.

Notice must be given to the living half-brothers or sisters,