

(5) Q. Should the remuneration of the executors be borne partly by corpus and partly by income?

A. Yes.

Costs of all parties of this application to be paid out of the corpus of the estate; those of the executors as between solicitor and client.

BOYD, C.

DECEMBER 24TH, 1915.

RE CULBERT.

*Will—Construction—Trust—“Whatever Belongs to me”—Inclusion of Realty—Avoidance of Intestacy—Devise to Wife “for her own Use and for the Bringing-up of my Children”—Discretion of Wife—Interest of Children.*

Motion by the executors of the will of one Culbert, deceased, upon originating notice, for an order determining two questions of construction.

The motion was heard in the Weekly Court at Toronto.

W. J. McClemon, for the executors and the widow.

F. W. Harcourt, K.C., for the infants.

THE CHANCELLOR said that the testator gave all his estate, real and personal, to executors and trustees named, in trust (1) to pay debts, etc., and thereafter to pay over and convey the same to the persons hereinafter named, that is, “to convey to my wife all my personal property, including my business, money, personal property, and whatever belongs to me, for her own use and for the bringing-up of my children.” Trustees were appointed with full power and authority to sell and dispose of all the testator’s estate, when necessary, and to execute all documents requisite to carry out his will.

The testator disposed of all his estate, real and personal, which became vested in the trustees to convey to the beneficiaries after payment of debts and testamentary expenses.

The sole beneficiary appeared to be the wife, and to her, besides all the personal estate, would go the real estate, under the words “whatever belongs to me.” The word that controls in this clause is not “personal;” but, having given to his wife “all his personal property,” he proceeds to give her something more, viz., “whatever belongs to me,” and that evidently refers to the real estate he had already vested in trustees.