

MASTEN, J.

MAY 23RD, 1917.

*RE STEACY.

Will—Construction—Direction to Pay Debts—Specific Devise of whole of Real Estate—Insufficiency of Personal Estate to Pay Debts—Sale by Executors of Land Specifically Devised—Disposition of Balance of Proceeds after Payment of Debts—Pecuniary Legatees—Marshalling of Assets.

Motion by the executors of the will of John Steacy, deceased, for an order determining certain questions arising upon the will as to the administration of the estate of the deceased.

The material parts of the will were as follows: "I direct all my just debts funeral and testamentary expenses to be paid and satisfied by my executors . . . as soon as conveniently may be after my decease. I give devise and bequeath all my real and personal estate of which I may die possessed in the manner following that is to say:—To my son William George Steacy I give all my land consisting of . . ."

William George Steacy died, leaving his widow Eliza Jane Steacy and four infant children entitled to the lands specifically devised to him.

The personal property was insufficient to pay the debts; after the personalty had been exhausted, the real estate was sold in order to provide funds for payment of debts. After payment of debts, there remained in the hands of the executors about \$4,156, what was left of the proceeds of the realty specifically devised to William George Steacy.

The general pecuniary legatees sought to have the doctrine of marshalling applied to this fund and to have their legacies paid out of it, thereby diminishing the moneys which would otherwise come, as proceeds of the devised land, to the widow and children of William George Steacy.

The motion was heard in the Weekly Court at Toronto.

W. A. Lewis, for the executors.

M. H. Ludwig, K.C., for the legatees, including (by appointment) the infant legatees.

F. W. Harcourt, K.C., for the infant children of William George Steacy.