

In the circumstances, the plaintiff had a right to treat Constant's wife as a valid holder of the charge; it was the ignorance or lack of caution of the defendant that led to the commission of the fraud, and he must suffer rather than the plaintiff.

Reference to Coole's Law of Mortgages, 8th ed., vol. 2, pp. 1320, 1321; Farquharson v. King, [1902] A.C. 325; Jones v. McGrath (1888), 16 O.R. 617; Manley v. London Loan Co.; (1896), 23 A.R. 139; and other cases.

Judgment for the plaintiff for foreclosure as prayed; the plaintiff agreeing, her claim is limited to \$850, the amount actually advanced, with appropriate interest, and with costs.

BOYD, C.

APRIL 27TH, 1916.

\*RE CUTTER.

*Will—Construction—Real and Personal Estate Given to Executors upon Trust—Residuary Gift in Favour of Sister—Gift over—Absolute Interest Cut down to Life Interest—Gift over in Event of Marriage of Sister—Invalidity—"Revert"—"Unused or Unexpended Balance"—Maintenance of Sister—Allowance—Encroachment upon Capital—Insurance Moneys—Moneys in Specie—Usufruct of Land.*

Motion by the executors and trustees under the will of George W. Cutter, deceased, for an order declaring the true construction of the will upon certain questions arising under the gifts, devises, and bequests therein.

The testator died on the 3rd October, 1915, at the city of Mishawaka, in the State of Indiana, having a fixed place of abode in Ontario. The will was dated the 15th April, 1915, and was admitted to probate on the 6th January, 1916.

The testator gave all his estate and effects to his executors and trustees in trust for the purposes mentioned in the will, viz.: (1) to pay all debts and testamentary expenses; (2) to pay a legacy of \$1,000 to a friend, and to give certain personal chattels to the friend's wife; (3) to pay a legacy of \$300 to another friend; (4) to hand over certain personal chattels to a named society (an Odd Fellows Lodge, to which he belonged) and to certain named persons; (5) "To my sister Rose A. Cutter I leave all the residue of my estate. On the decease of my sister Rose A. Cutter the unused or unexpended balance shall revert to the Odd Fellows Home of Toronto, Ontario. In the event of the marriage of my sister Rose all the residue hereinbefore bequeathed to her shall go to the Odd Fellows Home of Toronto, Ontario."