

as between the parties, O'Brien & Co. were, when the rails were ready to be delivered, entitled to a grade kept fit for tracklaying. The answer was, that O'Brien & Co. were not entitled to make any claim for loss of time and extra expense by reason of the grading not being fit for laying tracks when they began that part of their work. And this question (A.) was decided in favour of the Nepigon Construction Company.

The answers to the other questions (B., F., and I.) were against the company.

In the circumstances, and as the discussion of question A. was the most important, the parties should each bear their own costs of the stated case, unless there was some arrangement as to costs.

HIGH COURT DIVISION.

LENNOX, J.

JULY 4TH, 1917.

RE GRENIER.

Will—Construction—Creation of Trust Fund for Purpose of Placing Memorial Window in Designated Church—Impossibility of Carrying out Purpose—Disposition of Trust Fund—Application of Part for Inscription on Family Monument—Balance after Payment of Costs Falling into Residue.

Sarah Grenier by her will provided, first, for the payment of her debts and funeral and testamentary expenses. "Second, I will devise and bequeath unto my executor in trust the sum of \$350 the same to be expended towards providing a memorial window in the Roman Catholic Church . . . and \$100 for masses for my brother Robert and myself." Third, she gave \$300 absolutely to Isaac Grenier; fourth, all her real estate in Perth to Michael P. Adams absolutely; and, "All the rest and residue of my real and personal estate not hereinbefore bequeathed I will devise and bequeath to my niece Mary Adams wife of the said Michael P. Adams her heirs and assigns absolutely." By a codicil, the testatrix provided that, if there was not sufficient personal estate to meet the money legacies, including a bequest of \$1,000 provided for by the codicil, the real estate was to be sold and converted into money, and that "the residuary clause mentioned in my said will shall not be operative until all legacies shall be fully paid."