

After making certain specific gifts and giving certain directions, the testatrix proceeded: "As to one-half of the said residue, to pay the same to my sister Louisa Maria Johnston for her sole and separate use absolutely . . . The said sum of \$4,000 and all accumulations thereof shall be divided equally between my said sisters Louisa Maria Johnston, Charlotte Fenwick, and Frances Margaret Cunningham, for their sole and separate use . . . Provided always that if any of my said sisters . . . shall die in my life leaving a child or children who shall survive me . . . such child or children shall respectively take (and if more than one equally between them) the share and benefit which his, her, or their parent would have taken . . . if such parent had survived me."

The testatrix died on the 3rd December, 1897; the sister Louisa Maria Johnston predeceased the testatrix.

The motion was heard in the Weekly Court at Toronto.

W. S. Middlebro, K.C., for the applicants.

F. W. Harcourt, K.C., Official Guardian, representing the interest of the absentee.

J. F. Orde, K.C., for the surviving executor of the will.

BRITTON, J., in a written judgment, said that the first question was, whether John Johnston, one of the children of Louisa Maria Johnston, predeceased the testatrix. It was established that he left his home and family in 1877. He had not been heard from by his family nor by any known friend since that year; nor had he or any one on his behalf claimed his share in his own mother's estate. He would be presumed to be dead on the 1st January, 1885. He thus predeceased both his mother and the testatrix.

(2). The share to which John Johnston would have been entitled passed to his surviving brothers and sisters.

(3). The surviving executor should pay over the money in his possession or control to the surviving children of Louisa Maria Johnston.

(4). There was no necessity for further advertising for John Johnston. Reference to *Re Ashman* (1907), 15 O.L.R.42; *Re Moore* (1915), 9 O.W.N. 282; *Olsson v. Ancient Order of United Workmen* (1916), 38 O.L.R. 268.

Order declaring accordingly; costs of all parties out of the money in the hands of the surviving executor.