

HODGINS, J.A.,

OCTOBER 27TH, 1913

RE McKEON.

Will—Construction—Gift to Niece—Trust—Discretion of Trustee—Expenditure for Education of Beneficiary—Right of Beneficiary to Receive Portion Unexpended.

Motion by the trustee under the will of Albert McKeon, deceased, upon originating notice, for an order determining a question arising upon the construction of the will as to the disposition of the estate.

The motion was heard in the London Weekly Court.

T. J. Murphy, for Mary A. Crotty, the trustee.

J. B. McKillop, for the next of kin.

J. F. Faulds and P. H. Bartlett, for Angela Crotty.

HODGINS, J.A.:—The words of the will in question are as follows: "The balance of my estate . . . he" (the executor) "shall sell and hand over the proceeds to Mary A. Crotty, of St. Columban, to be held by her in trust, and to be expended by her for the education and support of my niece Angela Crotty now attending the Ursuline Academy in Chatham."

Angela Crotty at the death of the testator was a minor. She is now of age, and contends that she is entitled to have the balance of the estate which the will deals with, handed over to her. It is said that the trustee received about \$5,000, and has expended about \$800 or \$900 for Angela's education and support; that part is in the bank, and that the balance is invested in the security of a promissory note.

I think that this case falls within the line of decisions which hold that where an entire fund is given, and a purpose, such as education and support, is assigned as the motive of the gift, the beneficiary takes the whole fund absolutely. See *Hanson v. Graham*, 6 Ves. 249; *Re Sanderson's Trusts*, 3 K. & J. 497; *Younghusband v. Gisborne*, 1 Coll. 400; *In re Stanger*, 60 L.J. Ch. 326.

In the latter case Chitty, J., observes, on the terms of the gift (p. 327): "It is material to observe that it is not framed so as to make it the duty of the trustees to apply the whole of the income or corpus for R. Tate's benefit. Had this been so, I should have been prepared to hold that he took a vested interest in the whole fund."