

Application for the opinion and advice of the Court upon questions arising, or said to arise, under the will of Kate Clooney, late of the city of Toronto, married woman, deceased.

HON. MR. JUSTICE LATCHFORD:—The paragraph in question directs the trustees and executors to pay “to John Clooney Flanagan \$5,000, when he shall attain the age of 23 years.”

The legatee is not yet twenty-one years of age.

The testatrix directed that the “vested or expectant share of any infant” under her will shall be invested by her trustees during the minority of any child, who, if of the age of 23 years” would be entitled to a share under the will, and empowers the trustees to apply the whole or any part of the income of the expectant share of such minor for or towards his or her support, maintenance and education, with liberty to pay the same at their discretion to the guardian or guardians of such minor . . . and shall accumulate the residue (if any) of the said income by investing the same, and the resulting income thereof to the intent that such accumulation shall be added to the principal share . . . and follow the destination thereof.”

The trustees are also given power to resort to the accumulations of any preceding year, or years, and to apply the same towards the support, education or maintenance of any person for the time being presumptively entitled thereto, and may further at their discretion raise the whole or any part of the expectant share of any minor, and apply the same for his advancement or benefit as the trustees shall think fit.

In case of a deficiency of assets there is to be a proportionate abatement of the pecuniary legacies other than that to John Clooney Flanagan. Should this legatee die without leaving issue there is a gift over of the bequest made to him by the will.

It is quite clear that John Clooney Flanagan, if he attains the age of twenty-three, will be entitled to the \$5,000. The trustees have, in the meantime, the duty cast upon them of investing the \$5,000, and the discretion of applying for his maintenance and education the whole or any part of the income of his expectant share. There is nothing in the will fixing the time in which the conversion of the estate of the deceased is to be made. The trustees accordingly have the