The motion was heard in the Weekly Court at Toronto.

W. Lawr, for the applicant-company.

K. W. Wright, for the Inspector of Prisons and Public Charities.

F. W. Harcourt, K.C., Official Guardian, as guardian ad litem of Lucy Green, a person of unsound mind.

Kelly, J., in a written opinion, set out the provisions of the will. There was, first, a direction to pay debts and funeral and testamentary expenses and a bequest of $100; then, a devise and bequest to the testator's wife for her life of all the residue of his estate, both real and personal; then, a devise, after the wife's death, of a parcel of land to the testator's daughter Susan; then, a direction that, after the wife's death, a farm of 100 acres should be sold and any securities for money converted into money; then, a direction that out of the moneys on hand at the death of the wife and the moneys realised from the sale of the farm and securities there should be paid specified sums to three other daughters and $100 to a church fund; then, a provision disposing, in favour of his daughters Lucy and Susan, of the shares of the other daughters and the son in the event of their dying before the wife's death; the residue of the estate was then bequeathed to the daughters Lucy and Susan; and there was a provision that, in the event of the daughter Susan predeceasing the wife, the land devised to Susan should go to Lucy; if the moneys were not sufficient to pay in full the legacies to the children, the legacies were to abate proportionately.

The will was made only two months before the testator's death. His estate consisted of realty valued at $2,000 and personalty $3,212.33. He left no debts except those incident to his last illness. His widow was far advanced in years, and unable to provide for herself. The income from the assets given to her to hold for her life would not provide for her needs. The corpus would, if not encroached upon, be sufficient to pay the legacies to the children in full; and the provision in the will for abatement pointed to his having in contemplation such a drawing upon capital as would reduce the amount available for payment of these legacies.

In these circumstances, the will should be construed as authorising the widow to draw upon the capital of the personal estate to the extent of her needs, as in Re Johnson (1912), 27 O.L.R. 472. She was not entitled, as in Re Tuck (1905), 10 O.L.R. 309, to an absolute control over the whole estate.

The conclusion stated in In re Thomson's Estate (1880),