

BOYD, C.

FEBRUARY 17TH, 1916.

RE PALMER.

Will—Construction—Annuities—Payment out of Particular Funds—Termination of Annuities at Deaths of Annuitants—Repugnant Clause—Residuary Devise—Rents.

Motion by the executor and the trustees under the will of Catharine Palmer, deceased, for an order determining 5 questions arising in the distribution of the estate in regard to the proper construction of the will.

The testatrix died in Ireland. She devised her real estate in Ontario to her executors in trust to sell and from the income arising from the real estate until sale and from the proceeds after sale to make the following payments: (1) to her daughter Katharine during her life and after her death to her children an annuity of £135, to be the first charge upon the estate, and "as the several annuities hereinafter bequeathed fall in the amounts thereof or so much as may be necessary shall be added year by year to the said annuity . . . until it shall be increased to . . . £300 . . . and then shall continue at that amount;" (2), (3), (4), (5), (6) annuities to her step-children; (7) to her daughter-in-law Clara an annuity of \$200 during widowhood. The testatrix then directed that if the income from the property should at any time be insufficient to provide in full for the annuities, the same (excepting the £135 a year to Katharine and her children) should be proportionately reduced; and after the sum of £300 a year for Katharine should be made up, the testatrix directed that from such of the said annuities as should fall in from time to time the amounts of such annuities, or so much as should be necessary, should go from year to year as annuities to her sons Harry and Thomas until the same should reach £50 a year each, and then should continue as an annuity to each of them for his natural life of £50 a year, in addition to the other bequests made in their favour in the will, and at the death of each his annuity should be disposed of as he should appoint.

The questions were as follow:—

1. Are the sons Harry and Thomas entitled to the annuities directed to be paid to them by the will?
2. Are the same payable only out of funds set free by the falling in of preferred annuities, or are the said annuities chargeable against the estate of the deceased generally.