

Reference to Euclid Avenue Trust Co. v. Hohs (1911), 23 O.L.R. 377, 385, 24 O.L.R. 447, 450.

Judgment for the plaintiff company for the amount of the note with interest and costs.

LATCHFORD, J.

MARCH 2ND, 1916.

RE CONN.

*Will — Construction — Devise — Life Estate — Survivorship — Estate in Fee in Certain Events — Merger of Life Estate.*

Motion by Catherine Ann Conn, a devisee named in the will of Samuel Conn, deceased, for an order determining the true construction of the will in so far as it related to the east half of lot 24 in the 2nd concession of Fitzroy.

The motion was heard in the Weekly Court at Ottawa.

Peter White, K.C., for the applicant.

A. Burwash, for certain of the next of kin of the testator.

LATCHFORD, J., said that the east half of lot 24 was, by para. 8 of the will, devised to the testator's two daughters Martha and Catherine Ann (the latter being the applicant) "during their lives respectively or until they marry respectively or during such time as my son James shall continue to live and remain of unsound mind." The form was to be subject to a charge for the maintenance of James during his insanity. Should James recover his reason, the farm was to pass to him in fee. James died without having recovered his reason. All payments for his maintenance seemed to have been made. Martha survived the testator, but died, unmarried, many years before the death of her brother James. The testator's death was in 1897.

"During their lives respectively" must be taken to mean, not only during the life of both daughters, but also during the life of the survivor of them. It conferred upon the sisters a life estate in common. Upon Martha's death, this enured for the sole benefit of the survivor, Catherine Ann: *Heathe v. Heathe* (1740), 2 Atk. 121; *Doe dem. Patrick v. Royle* (1849), 13 Q.B. 100, 112, 114.

Para. 11 of the will, the testator said: "In case my said son James should predecease my said two daughters Martha and Catherine Ann, and without having recovered his reason, and both or one of my said daughters are or is unmarried at the time, then I give and devise the said east half of lot No. 24 unto them or her, as the case may be, in fee simple."