

BRITTON, J.

JULY 19TH, 1917.

RE CLEAVER.

Will—Construction—Distribution of Residue of Estate—Period for Distribution—Will Speaking from Date—Wills Act, R.S.O. 1914 ch. 120, sec. 27—Persons Entitled to Share—Children and Grandchildren—Vested Gifts.

Motion by the executors of the will of James Cleaver, deceased, for an order declaring who are the persons entitled to receive the undistributed residue of the estate of the deceased—a sum of about \$5,000 and accumulated interest—under clause 11 of the will.

The motion was heard in the Weekly Court at Toronto.

E. H. Cleaver, for the executors.

F. W. Harcourt, K.C., for the infants.

D. C. Ross, for the children alive at the time of the first construction of the will.

Hughes Cleaver, for others interested.

BRITTON, J., in a written judgment, said that clause 11 provided for the trustees dealing with the estate as fully set out, and provided that, if the wife of the testator should be living 18 years from the date of the will, a sufficient sum should then be invested in such a way that the interest arising therefrom should provide for the payment of an annuity to her of \$200, during her natural life, and then to "divide all equally amongst all my children, the children of any of my said children who may then be dead to be entitled to and receive their parent's share;" and, "as soon after the decease of my said wife as the money hereinbefore directed to be invested for the purpose of paying said annuity can be collected in or realised from the securities in which it may then be invested, to divide the same equally amongst my said children, in the same manner as hereinbefore directed respecting the other moneys arising from the sale of my estate and personal property."

The will was dated the 30th January, 1877, and the testator died on the 30th March, 1890. At the date of this will the testator had 15 children, all living. Three of these children predeceased the testator; these children were: John, who died on the 27th June, 1880; George, who died on the 15th February, 1885; and Charlotte, who died on the 17th February, 1888; each of these three left children. Mary Colling and Nancy Plewes died before 1895.