

or his wife Alphonsine dying, then the share of the one so dying is to be given to the survivor of them, and the share of my nephew is to be set apart, and invested by my trustees . . . until he arrives at the age of 21 years. . . .”

The motion was heard in the Weekly Court at Toronto.

J. R. Corkery, for the executors.

G. F. Shepley, K.C., for Alphonsine Le Brun.

J. M. Ferguson, for the widow of the testator.

H. E. Rose, K.C., for the trustees of the estate.

E. C. Cattanaach, for the testator's nephew.

BRITTON, J., in a written opinion, disposed of the questions submitted as follows:—

(1) Q. The undisposed of personalty of the estate not being sufficient to pay the debts, mortgage charges, etc., is the deficiency to be met by the personal estate disposed of by the will, with a consequent abatement of the legacies, or should the deficiency be borne by the mortgaged real estate? And should the mortgage interest already paid, that due, and that to become due, be paid by the life-tenant out of revenue derived from the property?

A. Section 38 of the Wills Act, R.S.O. 1914 ch. 120, applies. The deficiency is to be borne by the mortgaged real estate. The interest upon these mortgages—that already paid and that to be paid—must be paid by the life-tenant out of the revenue from the mortgaged property.

(2) Q. Was it the testator's intention to make the island subject to the direction given regarding lots 18 and 19?

A. Yes. Clauses 5 and 6 of the will deal with both properties in the same way.

(3) Q. Are the sisters who are entitled to share in the proceeds of the sale of the testator's interest in the partnership business those sisters who are alive at the time of the distribution of the proceeds, or those alive at a date 3 months after the trustees have received the whole of the proceeds?

A. The sisters entitled to share are those alive at the time fixed for distribution of the proceeds.

(4) Q. Has the share of Carisse Le Brun, now dead, vested in his estate or in his wife?

A. In his wife. Carisse died before the time for distribution. His wife survived her husband, and was alive at the time fixed for distribution.