

one signing would not be liable until all had signed. No such condition was stated to the plaintiffs or their representative, and they had no knowledge that there was any such condition.

Evidence was offered by the defendants and admitted for the purpose of shewing that the written contract was subject to a condition; and many cases were cited; but all were distinguishable because in them the condition relied upon was agreed upon by the parties or had been stated to the party seeking to enforce the obligation.

Reference to *Pym v. Campbell* (1856), 6 E. & B. 370; *Davis v. Jones* (1856), 17 C.B. 625; *Murray v. Earl of Stair* (1823), 2 B. & C. 82; *Pattle v. Hornibrook*, [1897] 1 Ch. 25; *Long v. Smith* (1911), 23 O.L.R. 121; *Ontario Ladies' College v. Kendry* (1905), 10 O.L.R. 324.

Judgment for the plaintiffs for \$37,015.35 and interest at 6 per cent. per annum from the 30th December, 1916, less a credit of \$1,289.02 as of the 2nd February, 1917, with costs.

LATCHFORD, J.

FEBRUARY 8TH, 1918.

\*RE COTTER.

*Will—Construction—Legacy Vested in Testator but not Paid until after his Death nevertheless Passing under his Will—“The Whole of my Money of which I Die Possessed.”*

Application by the Royal Trust Company, administrators de bonis non, with the will annexed, of James Lawrence Cotter, who died in 1887, for an order determining the following question:—

Does the money in the hands of the administrators, proceeds of a legacy of £800, left to the deceased by Mary Ann Kilgour, pass to Frances Cotter, the widow of the testator, or to his son George Sackville Cotter, or is there an intestacy as to such legacy?

The application was heard in the Weekly Court, Toronto.

W. D. Gwynne, for the administrators.

D. T. Symons, K.C., for Agnes Mary Cotter, representing the unmarried daughters of Frances Cotter, now deceased.

R. T. Harding, for George Sackville Cotter.

J. F. Boland, for James Lawrence Rogerson Cotter, representing the heirs and next of kin of James Lawrence Cotter and the persons entitled in remainder under the will of Frances Cotter.