

The questions are new, and success has been divided, so that costs may be in the cause.

TEETZEL, J.

MARCH 16TH, 1905.

WEEKLY COURT.

RE BELL.

*Will—Construction—Power of Sale—Exercise by Substituted Trustee—Application to Particular Property—Release of Trustee—New Trustee.*

Motion by the trustees of the will of John Bell, late of the city of Toronto, barrister-at-law, who died on 11th December, 1875, for an order declaring the construction of the will, and allowing H. L. Herring, one of the trustees, to retire, and appointing the Toronto General Trusts Corporation trustee in his place.

J. H. Moss, for trustees.

E. D. Armour, K.C., for the Nagle beneficiaries.

C. A. Moss, for the Herring beneficiaries.

A. Bruce, K.C., for the Canada Life Assurance Co.

TEETZEL, J.—The questions of construction are: (1) whether power of sale given to trustees in the will is personal to the trustees therein named, or is attached to the office of trustee, and whether the same may be exercised by any trustee or trustees for the time being performing the duties of the office; and (2) whether the trustees under the will have power to sell the lands and premises known as Nos. 8 and 10 King street east and 83 Yonge street.

Upon the first question I am of opinion that all the powers given by the will to the trustees therein named may be exercised by any trustee or trustees for the time being performing the duties of the office, and that such powers are not personal only to trustees named in the will.

By the first clause of his will the testator gives all the property he may die possessed of to his "executors and trustees hereinafter named, in trust to enable them or the survivors or survivor of them to carry into effect this my will," and by the last clause of his will he appoints his wife Catherine Bell (since deceased) and his daughter Susan Maria Nagle and his son-in-law Henry L'Estrange Herring to be executors and trustees of his will.

The only portions of the will in which the executors are expressly authorized to sell is in these words: "My will