

will of the deceased she took only the income of the money for life, in addition to the house and lot for life.

R. C. Clute, K.C., and J. A. McInnes, Vankleek Hill, for plaintiff.

A. H. Marsh, K.C., and F. W. Thistlethwaite, Vankleek Hill, for defendants.

THE COURT (STREET, J., BRITTON, J.) held that the presumption that services rendered by one sister to another, when they are not living together as members of the same family, are to be paid for, is much more easily rebutted than it would be if the services had been rendered to a stranger. The plaintiff, until she heard the contents of the will, had no intention of making a charge for her services. There was no reason to suppose that the deceased ever thought that plaintiff expected to be paid. In the absence of any offer of or request for payment during the nine months that plaintiff attended upon her sister, the Court should assume an understanding on the part of both that the provision in the will of the deceased in favour of plaintiff was to be her remuneration for her trouble, and that no charge would be made. There was no contract while the services were being rendered, and plaintiff had no right to claim pay for them upon finding that the income of the money only and not the principal had been bequeathed to her: *Osborn v. Guy's Hospital*, 2 Str. 728; *Baxter v. Gray*, 3 M. & G. 771; *Roberts v. Smith*, 4 H. & N. 315; *Robinson v. Shistel*, 23 C. P. 114; *Morris v. Hoyle*, 28 C. P. 598; *Mackey v. Brewster*, 10 Hun. 16; *Wood on Master and Servant*, sec. 76; *Maddison v. Alderson*, 8 App. Cas. 467; *Smith on Master and Servant*, 4th ed., p. 202.

Appeal dismissed with costs.

---

NOVEMBER 13TH, 1903.

DIVISIONAL COURT.

HILL v. ROGERS.

*Execution—Summary Inquiries in Aid of—Ascertainment of Interest of Execution Debtor Under Will—Mortgage—Rules 938, 1016, 1019.*

Appeal by plaintiff (judgment creditor) from order of STREET, J., dismissing an application by plaintiff for an order under Rules 1016, 1017, and 1018, and under Rules 938 and 1019, or any of them, declaring the rights and interest of the defendant John Rogers the younger (the judgment debtor) under the will of his grandfather, John Rogers.