

construction of the will, with reference to certain questions arising in the administration of the estate.

The motion was heard in the Weekly Court, Toronto.

R. U. McPherson, for the executor.

R. McKay, K.C., for J. R. Lunness.

T. R. Ferguson, for the other persons interested.

SUTHERLAND, J., in a written judgment, said that the testator died in November, 1915, and his widow in May, 1919. The estate was of about the value of \$300,000, of which about \$240,000 had been administered and the accounts in connection therewith passed in December, 1918.

By clause 7, sub-clause 2, of the will, the testator directed his executors, after providing for certain bequests, to sell and dispose of any or all of his property situated in Ontario at any time in their discretion within 10 years from his decease and to divide the proceeds equally among his three daughters; and, after the expiration of 5 years from his decease, to sell and dispose of all his property situated in Saskatchewan and Alberta and divide the proceeds equally among his four children, i.e., the same three daughters and his only son. Among the assets of the estate were 1,191 shares of Canadian Pacific Railway Company stock and 7 shares of the stock of an American company. The first question submitted was whether the Canadian Pacific shares were property in Ontario or in Saskatchewan or in Alberta, or in any of them. The testator lived and executed his will in Ontario; he died out of Ontario, his absence being for a temporary purpose. The head office of the company was in the Province of Quebec. The share-certificates were kept by the testator in a box in a safety deposit vault, in Ontario, and were there at the time of his death. The learned Judge said that he could not think, having regard to the whole will, that the word "situated" after the word "property" really made any difference in the construction to be given to the word "property" or that it must be confined to real property only. He was of opinion that the words "property situated in Ontario" included all the real and personal property which the testator owned in the Province of Ontario; and that the Canadian Pacific shares were property situated in Ontario. Evidence to shew that the testator ordinarily meant "real estate" when using the word "property" was not admissible.

The second question should be answered by saying that the testator's three daughters were entitled to the proceeds of the Canadian Pacific shares.

The third question was, whether the testator's son took any share or interest under clause 7, sub-clause 2. The learned Judge