

KELLY, J.

FEBRUARY 14TH, 1921.

RE ROSS.

Will—Construction—Bequest of Residue to Daughter after Death of Husband—No Disposition of Income of Residue during Lifetime of Husband—Daughter and Husband only Persons Entitled upon Intestacy—Income to be Paid out as if Intestacy in Regard thereto.

Motion by the executor of the will of Lydia M. Ross, deceased, for an order determining certain questions as to the meaning and effect of the will.

The motion was heard at a sittings in Kingston, as in Weekly Court.

F. King, for the executor.

G. M. Macdonnell, K.C., for the husband of the testatrix.

A. B. Cunningham, for Alice B. Porteous.

KELLY, J., in a written judgment, said that Alice B. Porteous, the testatrix's daughter by a former marriage, was her only child. By the will the testatrix, after making specific bequests to her husband and others, bequeathed the residue of her estate, after the death of her husband, to her daughter.

The questions submitted were: (1) Is the husband entitled to the income from the estate during his lifetime? (2) If not, to whom is the income payable during his lifetime? (3) If to the daughter, should the executor wind up the estate forthwith?

A bequest after the death of a named person to a person presumptively at the date of the will entitled in case of intestacy of the testator, where the will contains no express disposition of the property during the lifetime of the first named person, impliedly gives such person a life-estate. The rule does not apply where the donee under the gift (after the death of such named person) is a stranger and not the heir, or where such donee is only one of several co-heirs or one of several persons presumptively entitled under the Statute of Distributions: *In re Springfield*, [1894] 3 Ch. 603; Halsbury's Laws of England, vol. 28, p. 847, paras. 1506, 1507.

Had the testatrix died intestate, her husband and her daughter, and they alone, would have been entitled to share in her estate. Assuming that, on an intestacy, the daughter alone would have been the person entitled, the bequest of residue would have gone to her only on the death of the husband, who in the meantime would have been entitled to a life-interest. But, the daughter