

MACMAHON, J.

NOVEMBER 18TH, 1902.

CHAMBERS.

RE MCKENZIE.

Will—Construction—Annuities—Setting apart Fund for—Deficiency of Income — Encroaching on Principal — Rights of Residuary Legatees.

Motion by way of originating notice under Rule 938, by Catharine McKenzie and Isabella Henderson, annuitants under the will of William McKenzie, who died on 3rd January, 1894, at the village of Morrisburg, having made his will on the 6th September, 1893, for a summary order declaring the construction of the will.

The testator made specific bequests of money and personal property to relatives and friends, and also devised certain lands in fee to his brother James, to his sisters Isabella Henderson and Janet McKenzie, and to his nephew James McKenzie. Then, after devising to his sister Janet a life estate in part of the west half of lot 31 in the 1st concession of Williamsburg, the testator gave the remainder in that land and all the residue of his property, real and personal, to his executors "in trust to provide means to pay the expense of administration, to pay my debts and liabilities, and to pay the bequests hereinafter made . . . to deposit at interest . . . or invest . . . any balance that may be on hand at any time to form a fund to keep up the yearly payments to my sisters . . . namely, to pay to each of my sisters, Janet, Margaret, Isabella, and Catharine, \$250 a year, or if there be not so much available in any year, then to divide equally between them what may be available, and make up the deficiency to them when there are funds to do it with, and to pay to any of them who may have greater need on account of ill-health or misfortune a greater sum than to the others, and a greater sum than \$250, as in the opinion of the executors may be fit. After sufficient funds have been invested to keep up the payments to my sisters as aforesaid, then the executors to pay . . . (certain legacies) . . . And to pay to the children of my brother James McKenzie whatever may remain of the estate, share and share alike, and so that the child or children of such as may be dead will take his, her, or their parent's share." Janet died in 1897 and Margaret in 1901. The testator's brother James died on 15th March, 1902, leaving six children, who were all of age and the only residuary legatees under the will. The estate was valued for probate at \$81,127.43. After providing for prior bequests, the income of the estate was not sufficient to pay the applicants \$250 a year each.