

MASTEN, J.

MARCH 13TH, 1918.

*RE BARNES.

*Gift—Parent and Child—Construction of Documents—Gift or Loan
—Death of Parent (Donor)—Duty of Executors—Intention of
Parent—Evidence of, from Documents.*

Application by the executors of the will of Elizabeth A. Barnes for the advice and direction of the Court in respect of a sum of \$1,500 lent by the testatrix to her daughter.

The application was heard in the Weekly Court, Toronto.

A. M. Dewar, for the executors.

H. R. Frost, for the daughter.

F. W. Harcourt, K.C., the Official Guardian, for the infants and (by order) for all others interested.

MASTEN, J., in a written judgment, said that when the loan was made, on the 8th July, 1913, the daughter executed a written receipt for the amount "as a loan to be used as a first payment upon the house" (describing it). The receipt went on: "I also hereby agree to pay you interest at the rate of 6 per cent. per annum on the said loan . . . and further agree that the said loan is to be a lien upon my equity in the said house until paid or otherwise satisfied, but repayment of said loan is not to be demanded of me as long as I pay interest and provide for the aforesaid lien or give equivalent security satisfactory to you."

By a writing executed by the testatrix on the same day, she directed that, notwithstanding any testamentary disposition made or to be made, the sum of \$1,500 lent to her daughter "is hereby given to her absolutely and unconditionally for her own use, benefit, and disposal, and I expressly provide that the said gift of \$1,500 is not to be considered a part of my estate or subject to any condition of my will."

The testatrix died on the 24th March, 1917. No interest on the money lent was ever paid by the daughter.

The question submitted was, whether the advance made in 1913 to her daughter formed part of the estate of the deceased, which it was the duty of the executors to collect.

The documents made it clear that it was the intention of the testatrix that at her death, if she predeceased her daughter, there

* This case and all others so marked to be reported in the Ontario Law Reports.