

BRITTON, J.

FEBRUARY 21ST, 1917.

RE ANDERSON.

Will—Construction—Devise to Wife—“Should my Wife Cease to be my Widow”—Devise over to Children—Estate of Wife Terminable at Death or Remarriage.

Motion by the widow of John C. Anderson, deceased, for an order determining questions arising as to the construction of his will, which was as follows:—

“After all my just debts funeral and testamentary expenses have been paid I give devise and bequeath to my wife Eva Anderson all my property both real and personal of any kind of which I may die possessed.

“It is my desire and wish that my said wife shall have the privilege of selling any or all of my said real property with the consent and approval of my executors at any time she may desire to do so. Should any or all of my property be sold I direct my executors to retain in trust the proceeds thereof and to invest the same as they may deem advisable in the best interests of my estate.

“Should my wife cease to be my widow then I direct my executors to divide my real and personal property or the proceeds thereof (should the same have been sold) equally among my children share and share alike.”

The motion was heard in the Weekly Court at Toronto.

Daniel O'Connell, for the widow.

G. N. Gordon, for the executors.

F. W. Harcourt, K.C., for the children of the testator, infants.

BRITTON, J., in a written judgment, said that it seemed clear, upon reading the whole will, that the intention of the testator was, that his wife should have a life estate in all the property unless she married again: *Re Lacasse* (1913), 4 O.W.N. 986.

The widow takes an estate for life, subject to that estate being divested if she should marry again.

The widow is entitled to the income of the real and personal property during her life and while the property remains unsold, subject to divestment upon her remarriage.

If the property or any part should be sold and the proceeds invested, the widow is entitled to receive payment annually of the interest.