

ORDE, J.

SEPTEMBER 8TH, 1920.

RE BRYANT.

Will—Construction—Provision for Maintenance of Grandchildren during Minority—Trust—Gift to Trustees—Gift by Implication to Grandchildren at Majority—Survivorship—Gift over.

Motion by the surviving executors of Harry Bryant, deceased, for an order determining the true construction of a clause in his will.

The motion was heard in the Weekly Court, Toronto.

T. H. Simpson, for the applicants.

M. J. O'Reilly, K.C., for Lily Emma Smith and Harry William Audrey Smith, grandchildren of the testator.

ORDE, J., in a written judgment, said that the testator died on the 18th October, 1910, leaving a will of which his widow and two sons were the executors. By the will he devised and bequeathed his whole estate to his executors upon trust to pay debts and funeral and testamentary expenses, to convert the personalty (except the furniture) and invest the proceeds, and to pay the income arising therefrom and the rents and profits of the realty, after providing for insurance, repairs, and taxes, to the widow during her life. There was then a devise of a farm to the testator's son Alfred, upon the death of the widow, in fee. Then followed the clause now in question, by which the testator directed that the westerly half of his property "with 5 acres of land and the 6 houses thereon shall go to my two sons . . . until such time as my granddaughter Lily Emma Smith and my grandson Harry William Audrey Smith shall attain the age of 21 years. Out of the rents and profits derived from the said property my sons . . . shall apply such portions thereof as in their opinion shall be reasonably sufficient when added to the earnings of my two grandchildren . . . for their proper maintenance and education until" they "attain the age of 21 years. Should either of the aforesaid grandchildren die then the portion of the deceased one shall revert to the survivor and in the event of both . . . dying prior to attaining the age of 21 years then the property willed to them shall be divided between my grandchildren the issue of James and Ada Eustice . . . their heirs and assigns for ever. It is to be distinctly understood that any amount over what is used for maintenance education and clothing of my two grandchildren hereto referred to together with all reasonable charges for collecting rents repairs etc. to the six mountain