

MIDDLETON, J.

DECEMBER 24TH, 1918.

## RE BLACK.

*Will—Construction—Trust Fund Created by Will—Income or Part thereof to be Applied by Trustees in their Discretion to Maintenance of Daughter during Life—Division of Fund among other Children of Testatrix on Death of Daughter Named—Right of Daughter to Entire Income—Discretion of Trustees Uncontrolled by Court unless Dishonesty Shewn.*

Motion by Ethel Martin for an order determining a question arising upon the terms of the will of her mother, Ann Jane Black, deceased.

The motion was heard in the Weekly Court, Toronto.

G. W. Morley, for the applicant.

G. W. Mason, for the executors and trustees under the will.

D. R. Hossack, for the other adults interested.

F. W. Harcourt, K.C., Official Guardian, for the infants.

MIDDLETON, J., in a written judgment, said that the testatrix set apart \$12,000, the bulk of her estate, with instructions to her trustees to use the income, or so much as might in the opinion of the trustees be necessary, for the comfortable maintenance of her daughter Ethel during her life, with power to encroach upon the corpus, if necessary in the opinion of the trustees. On the death of this daughter, the fund was to be divided between a son and another daughter or their issue.

Probably contrary to expectation, this daughter had married, and she now took the position that she was entitled to demand the entire income, and that the trustees had no discretion to refuse her any part of this.

The discretion was by the will vested in the trustees, and there was no appeal to the Courts from what they might do, so long as they acted honestly: *Singer v. Singer* (1916), 52 Can. S.C.R. 447; *Gisborne v. Gisborne* (1877), 2 App. Cas. 300.

There was here no room for doubting the bona fides of the trustees. They had a duty to perform which had been made very delicate by reason of the primary obligation of the husband to maintain his wife. The fund was not the fund of Mrs. Martin; she was only to have what, in the opinion of the trustees, was necessary for her comfortable support and maintenance: subject to this the fund belonged to her brother and sister. The trustees must discharge the duty they had assumed; the task was theirs