

directed the residue of his estate to be divided equally per capita, and not per stirpes, among the then surviving children of S., J. and I., children of the deceased brother of M. He directed his executor to allow his estate to remain invested upon the same securities as it was invested at his death until the death of his wife, with liberty, however, to his executor at any time in his discretion to vary the investments thereof, and appointed an executor, to whom probate was granted on the 25th of October, 1893. At the time of the making of the will all of the testator's property was in personalty, but after making his will and prior to his death, he purchased a house in Toronto which was occupied by his widow until the time of her death in June, 1896.

The personalty was not sufficient to pay the legacies, and the executor entered into a contract for the sale of the dwelling house in order to realize money wherewith to pay these legacies. The solicitor for the purchaser objected to the title and the executor's right to convey, on the ground that a caution should have been filed pursuant to 54 Vict., c. 18, within one year after the death of the testator. This not having been done, the executor contended that it was unnecessary to file a caution for the reason that the property in question having been devised to the widow for her life, and after her death the residue of his estate was directed to be divided equally between the then surviving children of the three persons named in the will, the estate could not vest until after the death of the widow, which had taken place within the last year. For the purchaser it was claimed that the caution should now be registered under the provisions of 56 Vict., c. 20, s. 1, sub-sec. 5. It was, however, said that this was unnecessary and that the executor had power to sell under the provisions of R.S.O. c. 110, s. 23, there being an implied direction in the will, it being necessary to make sale of the property for the purpose of paying the bequests and dividing the estate. The point in question was whether a caution should have been filed within the year after the death of the testator, and if so, whether an order should now be made allowing it to be filed under the provisions of 56 Vict., c. 20.