

Mrs. Martin and her parents have left Ontario, and now desire to sell the lands. She has 5 children, of ages from 2 years to 12, and is said to be herself about 38 years of age.

The testator had 8 brothers and sisters, including the said Sophia Conn. All have died except Sophia Conn, some childless and others leaving children. One of such children, Wellington Kirkland, has been served with notice of the application, and by counsel submits his rights to the Court. I have ordered his counsel to represent upon the motion the whole class to which Mr. Kirkland belongs.

It may be highly improbable that at Mrs. Martin's death the children she now has or those she may hereafter give birth to shall all have passed away; but that contingency is quite within the limits of possibility. It is a possibility provided for by the will, and one to which I must have regard.

So considered, it seems to me clear that Mrs. Martin has merely a life estate contingent upon her survival of her father and mother. The devise to her is neither in fee nor in tail.

There will be an order accordingly, if the applicants care to have an order issue. In any event, the costs of the official guardian and of Mr. Secord should be paid by the applicants.

I may add that the cases cited in support of the contention of the applicants have no bearing upon the facts: *Jarman*, 5th ed., p. 1639; *Re Johnston and Smith*, 12 O. L. R. 262, 7 O. W. R. 845.

MAGEE, J.

JANUARY 22ND, 1909.

TRIAL.

NATIONAL STATIONERY CO. v. TRADERS FIRE INSURANCE CO.

NATIONAL STATIONERY CO. v. BRITISH AMERICA ASSURANCE CO.

*Fire Insurance—Amount of Loss—Evidence—Finding—Right of Action of Assured—Loss Payable to Bank—Assignment of Benefit to Bank—Addition of Bank as Defendants—Costs—Insufficiency of Proofs of Claim—Actions Brought Prematurely—Successful Plaintiffs Ordered to Pay Costs—Statutory Conditions—Burden of Proof—Waiver.*

Actions on fire insurance policies.