

verdict and judgment is well founded and should not be disturbed.

The appeal will be dismissed with costs.

LATCHFORD, J.:—I agree.

MIDDLETON, J.:—I agree.

BOYD, C.

JUNE 16TH, 1911.

RE AUSTON.

*Will—Construction—Direction to Executors to Pay Mortgage—
Deficiency of Free Personalty—Pecuniary Legacies—Ap-
portionment of Mortgage Burden.*

Motion by beneficiaries of real estate under C. R. 938, for an order construing the will of Rebecca Ogden Auston, on the question whether the deficiency of personal estate to pay debts, etc., should be met out of personalty represented by the stock, or borne *pari passu* by the land and the stock.

A. McLean Macdonell, K.C., for beneficiaries of real estate.

O. H. King, for executors.

E. C. Cattnach, for the infant.

BOYD, C.:—The will of the testatrix is dated the 13th July, 1909, and her death occurred on the 9th November, 1910.

The will directs that all her just debts, funeral and testamentary expenses shall be paid forthwith by her executors. Then, is the direction to the executors "to pay off any mortgage on any of my real estate which remains unsatisfied" at her death.

Then the bequest of legacies to the extent of about \$4,000. And next is the clause—"Subject to the payment of the above mentioned legacies and bequests by my executors I give all my estate and property real and personal to the sons (the executors) upon trust:"

(1) As to stock in a company, worth at least \$50,000, to set it apart in defined portions for various relatives.

(2) As to her land, to sell and divide the proceeds into four equal portions for relatives (some of whom are the same as those who take shares in the stock).

Parenthetically a discretion is given to the executors to refrain from selling, in which case a division is to be made in specie.