

HON. MR. JUSTICE MIDDLETON.

JUNE 26TH, 1912.

RE MCKAY.

3 O. W. N. 1555.

*Will—Construction—Annuity—Residue—Remainder—Maintenance of
Infants—Powers of Trustees.*

Motion by executors for construction of will of the late Hugh McKay, who died July 3rd, 1897, leaving an estate of about \$60,000. The will directed the realization of the assets by the trustees, and the setting apart of the sum of \$35,000, out of which his widow was to receive an annuity. On her death or remarriage, this fund was to become "part of and form the residue of my estate." The remainder of his estate was to be divided into as many shares as there were children living at his decease, and the interest on each share was to be paid to sons on reaching the age of 27, and daughters at 21. The principal sum of each share was to be given on the decease of each child "to their issue, if any," and in the event of their dying without issue, to be equally divided amongst the other children, share and share alike. Provision was made for the payment of marriage portions, sums for medical attendance, etc., from the "residue" which was "to be divided among my surviving grandchildren, and the interest accruing thereon to be paid to my children, each to share and share alike."

MIDDLETON, J., *held*, that the sum of \$35,000 was to be held until the death or re-marriage of the widow, or the coming of age of the youngest surviving child, whichever was the latest; that this fund was the fund out of which the marriage portions, sums for medical attendance, etc., were to be paid, and that any surplus income from the same should be divided amongst the children.

That the gifts of the shares of the so-called remainder are not absolute, but each share is to be held in trust for each child for life, and on his death, is to go to his issue, or failing any, to the fund of the surviving children.

That the attempt to postpone the receipt of the interest, by the sons, until they should attain 27, was nugatory.

Costs to all parties out of estate.

Motion for the determination of certain questions arising upon a construction of the will of the late Hugh McKay. Heard at London Weekly Court, on Saturday, the 22nd of June, 1912.

J. B. McKillop, K.C., for the London & Western Trust Company, executors.

F. P. Betts, K.C., for the widow, Ellen McKay.

T. G. Meredith, K.C., for James R., E. B., and H. McKay, adult children.

J. M. McEvoy, for Ethel M. Parker, a married daughter.

P. H. Bartlett, for Mary and F. C. McKay, infant children.

J. R. Meredith, for grandchildren and unborn issue of children.