

to the wood because she has no house to heat and does not need it. I entirely agree with all that is said in *Re O'Shea*, 6 O. L. R. 315. I am urged to give effect to "the intention of the testator." Quite so! But I must not confuse the testator's presumed intention with what would probably have been his intention in fact, if he had engaged a competent solicitor and had all the possibilities and contingencies brought before him. But instead he went to an innocent promoter of law suits, with the result that it cannot be gathered from the will that either the testator or his scribe intended to limit the provisions of paragraph three as contended for by defendant's counsel. All the same this is a cruel case. This old lady instead of insisting upon her pound of flesh with accessories might very well live with her son who for nearly twenty of the best years of his life made common cause with his father to make a home for the family upon this wretched farm. When all were done with him he married, and he appears to have married well; and at all events the plaintiff swears that her daughter-in-law has always been kind to her and always wants her to live with them—as to arrears the plaintiff has not shewn that she is in debt or has been in need of anything not furnished her and she made no demand until recently. I don't think I am bound to give arrears and I know it is a case in which I ought not to direct payment of arrears if not compelled to. The parties do not desire a reference. There are \$50 in the bank in the name of the plaintiff. The defendant if necessary will facilitate the giving of this out and it will be applied on the judgment. There will be judgment for this \$50 and \$130 on the promissory note with interest.

Under paragraph three of the will I think the defendant Honsinger should pay the plaintiff \$100 a year and her expenses for medicine and medical attendance not exceeding \$25. He must also furnish her with wood if and while she resides in the house given her by paragraph two of the will. I would give her wood, delivered at the farm, even if she should be keeping house elsewhere, but the contingency is so remote that I think it need not be provided for. The provisions in this paragraph are a charge upon the land and bind the estate of the defendant Small. The \$100 for maintenance should run from the date of the writ and be payable half-yearly.