

for. It is in evidence that the officer of the bank with whom the business began had knowledge of the agreement dated the 15th April, 1907, and it also appears (though with conflict of evidence) that the notes were not discounted by the bank. Then one would like to know on what terms originally were they taken and to be held by the bank from its own officer. The defendant has a very confused knowledge, or, it may be, recollection, of the course of affairs. I am not able, on these materials, to test his credibility or to form any satisfactory opinion as to how far he is to blame or to be blamed in his dealings with the bank.

It is not a case in any aspect for unconditional judgment; but, apart from this, generally I cannot regard it as a proper case for summary judgment. The parties should plead and go to trial in the ordinary way. Costs below and in appeal in the cause.

MEREDITH, C.J.C.P.

APRIL 13TH, 1910.

*RE BRANTON.

Will — Construction — Devise to Wife during Widowhood with Devise over in the Event of Remarriage — Gift over Taking Effect on Death without Remarriage—Vested Remainder under Gift over — Distribution of Share of Remainderman Dying Intestate.

Motion by Henry Branton, under Con. Rule 938, for an order determining certain questions arising on the will of Thomas Branton, deceased, dated the 26th January, 1874.

The testator, who died on the 17th January, 1875, by his will devised land to his wife Elizabeth "to have and to hold for her personal benefit so long as (she) shall remain my widow, and in the event of (her) remarrying, the (land) to become the property of my children, Fanny Lydia Branton and Mary Johnson Branton, to have and to hold as theirs without let or hindrance;" and, by the paragraph which followed this devise he provided "also that the said children shall receive their support, clothing, and education from the said Elizabeth Branton out of or from the said property willed by me to the said Elizabeth Branton."

The testator left surviving him these two daughters, issue of his marriage with Elizabeth Branton, and the applicant, his only child by a previous marriage.

Elizabeth Branton died in 1880, without having married again.

Mary Johnson Branton died on the 18th February, 1904, intestate and without ever being married, and the Toronto General

* This case will be reported in the Ontario Law Reports.