

The executors were authorized to sell various portions of the real estate mentioned in the will, but they were not empowered to sell this particular piece of land.

By clause 7 the testator devised all the rest of his estate to his executors in trust to sell and divide the proceeds "amongst all my children who may survive me in equal shares." Marilla, as one of the children of the testator, was held entitled to share in the residue.

Order accordingly. Costs of all parties—those of the executors as between solicitor and client—to be paid as a first charge out of the proceeds of the sale of the north-west quarter of lot 27.

MACMAHON, J.

OCTOBER 12TH, 1903.

WEEKLY COURT.

OSTERHOUT v. OSTERHOUT.

*Will—Construction—Bequest of Personally—"Reversion"—
Gift over—Absolute Interest.*

Motion by plaintiff for an injunction restraining defendant, one of the executors of the will of his son, Wilfred E. Osterhout, deceased, from dealing with the estate. By consent the motion was turned into a motion for judgment declaring the construction of the will.

The will directed that the testator's real estate should be sold, "and one-half of the proceeds thereof I give, devise, and bequeath to my father, Martin Osterhout (the defendant), with reversion to my brother Herbert G. Osterhout (the plaintiff), on the decease of my father, and the remaining one-half of the proceeds of my real estate I give, devise, and bequeath to my brother Herbert G. Osterhout, his heirs and assigns forever. I further give, devise, and bequeath to my father, Martin Osterhout, one-half of my ready money, securities for money, and money deposited . . . and one-half of all other my real and personal estate whatsoever and wheresoever, with reversion to my brother, on the decease of my father." And the other half he gave to his brother, his heirs and assigns forever. The plaintiff and defendant and one Flagler were appointed executors.

At the time of the death of the testator there was \$7,000 on deposit to his credit in a bank, and this sum was divided by the three executors equally between plaintiff and defendant.

This was the only part of the estate in question in this action.