The motion was heard in the Weekly Court at Ottawa.

W. McCue, for the executors.

H. A. O'Donnell, for Lillian Flindall.

J. E Madden, for the children of Sarah Platt.

FALCONBRIDGE, C.J.K.B., in a written judgment, said that questions 1, 3, and 5 did not appear to present any difficulty and should be answered as follows: 1. No; 3. No; 5. Yes.

Question 2 was not so easy of solution; but, the Chief Justice said, he had come to the conclusion that he must give effect to the words as appearing on the face of the will. He could not see anything in the circumstances surrounding the making of the will from which he could draw any inference that the testator really intended the real estate to be subject only to the payment of the one legacy. The words were clear—"subject to the legacies hereinafter mentioned"—and they ought to be given their full and ordinary meaning. The answer to this question was, Yes.

Question 4 should be answered, Yes. The gift to the children of Sarah Platt was a gift of the residuary personalty; and, the legacy of $200 to Alice Ward having lapsed, those children should get the benefit. This answer also covered question 6.

The learned Chief Justice said that he had been asked by counsel for the executors to answer another question regarding the purchase by the deceased in her lifetime of some property at Swift Current; but he did not feel that he could give an answer to that question on the material at present before him.

Costs to all parties out of the estate—those of the executors as between solicitor and client.

MASTEN, J.   NOVEMBER 27TH, 1916.

RE PHERRILL.

Will—Devise of Property not Owned by Testatrix—Benefits of True Owner under Will—Election—Compensation of Disappointed Devisees—Equitable Interest in Land — Subrogation.

Motion by the executors of the will of Hannah Pherrill for the advice and direction of the Court in regard to two questions arising upon the will.

The motion was heard in the Weekly Court at Toronto.

K. F. Mackenzie, for the executors and for Thompson David