

and premises" in Owen Sound, "now owned by my said wife," should be reckoned as part of his estate; and he further directed that his wife in her lifetime might advance sums of money to the children, and such sums should be taken account of in the final division and deducted from the children's shares.

It was admitted that the widow was put to her election by the terms of the will; and the learned Judge found as a fact that she had elected to take under the will; and so the store and premises referred to became part of the estate to be dealt with under the will.

The testator died possessed of both real and personal property, all of which passed into the possession of the widow under the terms of the will. The real estate remained in the same plight and condition as at the time of his death, with two exceptions, viz., the "old homestead," which was sold by the widow for \$4,000 cash, and the property referred to above as the "store and premises," which property was added to, built upon, and altered, moneys of the estate being expended for those purposes.

The personal estate and effects of the testator were sworn to be of the value of \$5,000, and at the time the action was brought there remained, of the \$5,000, about \$1,000.

Dealing with the rights of the parties in regard to the estate as they stood at the date of the widow's death, the learned Judge referred to Halsbury's Laws of England, vol. 28, para. 1410; *In re Thomson's Estate* (1880), 14 Ch. D. 263; *Re Cutter* (1916), 37 O.L.R. 42; *Re Johnson* (1912), 27 O.L.R. 472; and other cases; and said that he was of opinion that the whole of the real and personal property of the testator formed a common fund, and no distinction was to be made in the manner of dealing with different parts; that the widow took a life-interest in the residue after payment of debts and legacies, with a power of disposition during her lifetime, but no power of disposition by will; and that the residue remaining upon her death was distributable in accordance with the will of the husband.

Judgment declaring accordingly; the costs of all parties to be paid out of the estate, but only such costs as would have been incurred had the matter been dealt with upon originating notice.