

This section has, in turn, been judicially considered in such cases as *Bunnell v. Gordon*, 20 O. R. 281; *Thomson v. Cushing*, 30 O. R. 123; and *Stewart v. Guibord*, 6 O. L. R. 262, 2 O. W. R. 168, 554. Without referring to the English cases, which will be found referred to in *Holmsted & Langton*, pp. 49, 50, 51, it seems quite clear that a declaration will not be made in a case in which the question is a mere academic one, as it is here.

The defendant does not deny her liability to pay; any purchaser or mortgagee of any of the real estate will take with express notice of the terms of the will, as the conveyance of the two lots refers specifically to the will, and the only title the defendant has to any other real estate is derived through the will.

If and when there is any default in payment, the plaintiff may exercise all the rights he may have under the will. But until then and until a contest of any rights he may claim, if he has no right to a charge on the realty, he is not entitled to a declaration; if he has, there is no need of such declaration. Moreover, some of the property is subject to a mortgage, some of it has been sold, and no judgment could be given, in the absence of mortgagee or purchaser, which would be of any present advantage.

There is no reason for removing the defendant, nor for an order for administration, and the plaintiff wholly fails.

The action will be dismissed with costs.

I should add that the evidence of the defendant is wholly to be relied upon in matters of fact.

RIDDELL, J.

OCTOBER 21ST, 1907.

TRIAL.

BEAUDRY v. READ.

Company—General Meeting—Election of Directors—Shareholders Prevented from Voting—Meeting Voting Shares to Directors as Remuneration for Services—7 Edw. VII. ch. 34, sec. 88 (O.)—By-law Authorizing Payment to Directors—Necessity for Passing by Board and Confirmation by Shareholders — Consideration for Shares Voted — Abandonment of Appeal in Previous Action—Validity—Directors Lending Money to Company—Repayment—Illegality—Costs.

Action by Beaudry, Thorpe, and others against the Ruthel Mining Co. and the de facto directors thereof, for an