W. T. J. Lee, for the executor.

W. N. Ferguson, K.C., for the widow.

No one for the others interested.

RIDDELL, J.:—"Benefit" is not a word of art, not a technical legal expression, such, for example, as "heirs of the body," to which a certain fixed interpretation must be given. It may imply an absolute interest or a life interest or any less interest. . . .

[Reference to In re Phené's Trusts, L. R. 5 Eq. 346; Armstrong v. Armstrong, L. R. 7 Eq. 518.]

The will should be given the same effect as though it had read, " I also will to my wife R. S. all my real and personal property . . . as long as she remains my widow, and in the event of her having any of my money," etc., etc.

The result would be that as regards the real estate she has a fee simple, subject to be divested upon her marrying again, in which case there is an intestacy. In respect of the personal property, she has the right to use it as she requires—if any be consumed during widowhood it is gone. In the case of the money, whether secured by mortgage or not, she has the right to spend it as she requires. She will, therefore, be entitled to receive the instalments of the mortgage as they are paid. Whether she is entitled to anything further, it is not necessary upon this application to determine.

Nor is it necessary to determine the result if she should marry again: In re Mumby, 8 O. L. R. 283; In re Tuck, 10 O. L. R. 309; Theobald on Wills, Can. ed., p. 497 (a), and cases cited.

Costs of all parties out of the fund.

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RIDDELL, J., IN CHAMBERS.   NOVEMBER 6TH, 1909.

KELLY v. ROSS.

Defamation—Pleading—Statement of Defence—Newspaper—Mistake—Statements about Plaintiff not Complained of — Averment of Truth—Mitigation of Damages.

This was an action for libel, based upon an article in the Ottawa "Evening Journal" of the 21st January, 1909, the concluding sentence of which was complained of: " Comments of Mr. Justice Grantham in England on Kelly's conduct and conviction with Earnest Terah Hooley, the notorious London promoter, were also given."