

THE
ONTARIO WEEKLY REPORTER.

(To and Including October 31st, 1903)

VOL. II.

TORONTO, NOVEMBER 5, 1903.

No. 37

STREET, J.

OCTOBER 26th, 1903.

CHAMBERS.

RE FOSTER

*Will—Construction—Devises of Land—Charge of Debts—
Mortgage Debts—Apportionment—Valuation—Costs.*

Further evidence was adduced and further argument heard in this matter after the judgment reported ante 212.

The same counsel appeared.

STREET, J.—Referring to my judgment in this matter of last March, evidence has now been adduced fixing the value of the west quarter of lot 35 in the 3rd concession R. F. Nepean at \$3,100 and that of the north half of lot 34 in the same concession at \$5,000.

The last mentioned lot is, however, subject to a mortgage of \$700 or \$800 in addition to the subsequent charge of \$2,700 upon both lots. Under the authorities the amount of the mortgage with which the north half of 34 is solely chargeable should be deducted from the \$5,000 at which the land is valued, for the purpose of computing the proportion which that lot should bear of the \$2,700 mortgage, and the other debts, if any, of the testator. The total amount of the \$2,700 mortgage and the other debts, if any, are to be divided between the two parcels in the proportion of 3,100 to 5,000, minus the amount of the \$700 or \$800 mortgage.

It was argued that there should be a further deduction from the \$5,000 of the value of the rights given to the sisters of the devisee by the testator and charged upon the north half of 34 by the will. I cannot find any authority for this contention, and it seems contrary to principle. The theory of Locke-King's Act is, that the testator intended to give to the devisee only his equity of redemption in the land devised. Any charges which the testator creates by his will are charges upon the equity of redemption devised, and must be taken to