

BRITTON, J.

NOVEMBER 20TH, 1911.

McKINLEY v. GRAHAM.

Limitation of Actions—Action to Enforce Charge on Land—Will—Legacy—Executors—Devisee — Trust — Devolution of Estates Act—Limitations Act.

Action by Ann Charlotte McKinley, daughter of Charles Harper, deceased, for administration of her father's estate, real and personal, and for a declaration that the legacies given by his will form a lien or charge upon the real estate, and for payment of the legacies by the defendants the executors, and, in default of payment, for a sale of the lands and payment out of the proceeds of sale.

The action was tried, without a jury, at Whitby.

L. T. Barclay, for the plaintiff.

H. L. Ebbels, for the defendants the executors.

H. C. Macdonald, for the defendant Charles Harper junior.

BRITTON, J.: . . . Charles Harper made his will on the 1st June, 1887, and died on the 2nd July, 1889.

So far as material . . . the disposition by will of the testator's property was as follows: to his wife, the use of the dwelling-house and ten acres of land, "embracing the orchard," for her life, all the household furniture and effects, and \$300 a year to be paid to her by the executors during her life; to his daughter Agnes Campbell, \$500; to his daughters Elizabeth Harper, Henrietta Harper, Ann Charlotte McKinley (the plaintiff), Mary Jane Earle, Margaret Harper, and Fanny Harper, each the sum of \$1,000, to be paid to these legatees as soon as the executors conveniently could pay them, but in any case within five years after the death of the testator. The testator then devised to his son William Telfer Harper the west half of lot 5 in the 11th concession of Seugog, subject to the payment of \$200 a year until all the legacies should be paid. The son Charles Harper (defendant), under the will, took the residue of the testator's real estate, consisting of lot 4 in the 11th concession of Seugog and that part of lot 4 in the 10th concession owned by the testator. The devise to Charles was made subject, as a first lien thereon, to the payment of the annuity of \$300 to the testator's widow; and, in the event of the personal property not being sufficient to pay all the legacies to the testator's daughters, the unpaid balance was to be a second lien upon the