

tioned between the tenant for life and the remaindermen; and when on realization of any security a loss occurred, accounts must be taken, (1) of the amount required to pay off the security in full; (2) of what portion of such amount, if it had been paid would have been payable to the tenant for life, and what portion would have belonged to the principal of the trust fund; (3) of what interest upon the security had already been paid to the tenant for life; and after such accounts had been taken, the amount actually realized from the security should be added to the amount already paid to the tenant for life, and the total divided between the tenant for life and the estate in proportion to the amount they would have been entitled to if the whole of the security had been paid in full, the tenant for life standing charged as to her portion thereof with the amounts already paid to her.

*H. D. Gamble*, for the trustees.

*H. J. Scott*, Q.C., for the tenant for life.

*Harcourt*, for the infant remaindermen.

Divisional Court.]

[April 10.]

LEE v. ELLIS.

*Principal and surety—Advance to wife—Charge on her estate—Covenant of husband and wife—“Ordinary legal rights”—Account.*

A married woman who under the terms of her father's will, was entitled to receive her share of his estate on coming of age, agreed, on attaining her majority, with the other beneficiaries, to postpone the division. An agreement was afterwards executed between the husband, wife and trustee of the estate, whereby, after reciting the above facts, the trustee agreed to advance her certain moneys which she agreed to repay within a specified period, the advance being made a charge on her share of the estate. The agreement also provided that the amount of the advance should be deducted from her share in case of non-payment, or of a division of the estate prior to the date fixed for repayment. The husband was a party to the agreement for the purpose only of joining in the covenant, and it was expressly agreed therein that none of the provisions of the indenture should “in any wise effect or prejudice the ordinary legal rights” of the trustee to enforce payment.

*Held*, that notwithstanding the latter clause, the husband was liable as a surety only, and that he was entitled to be exonerated by his wife and to the benefit of her property in the trustee's hands, and to an account in regard thereto from the date of the covenant sued on.

*Moss*, Q.C., for the plaintiff.

*Marsh*, Q.C. for the defendant.

MACMAHON, J.]

[May 11.]

POCOCK v. CITY OF TORONTO.

FERRIER v. CITY OF TORONTO.

*Municipal corporations—Licenses—Petty chapman—Ultra vires—Damages.*

A municipal corporation whose existence is derived solely from the statutes creating it, is not liable for damages arising out of the enforcement of