

held by the trustee, less the costs of collection, must be made good by sale of such part of such securities as may be necessary for that purpose.

Another question involved upon the motion was as to the interest of George Easton and James L. Whiteford in the principal money after the death of the annuitants.

It was not seriously argued that George Easton, who was the husband of a daughter of the deceased, has any interest. In my opinion he has no interest whatever.

As to James L. Whiteford, he is a grandson of Isabella Easton, a daughter of the testator. I think he is entitled under the will of his mother, Margaret C. Whiteford, who is a daughter of Isabella Easton, to the share which would come to the said Margaret C. Whiteford if she should be living when the said principal money is distributed.

I think the effect of the will is that as to the principal estate to be retained by the trustees and to be divided at the death of the annuitants, it is vested at the date of the testator's death in the persons named, among whom it should be divided.

The will provides that one-fifth part of the principal money so retained to secure the annuities is upon the death of the annuitants respectively to be given to the children of the deceased daughter, Isabella Easton. One of those children was Margaret C. Whiteford, who was living at time of testator's death, but died in 1895, and by her will gave all her estate to the said James L. Whiteford, and in my opinion he is entitled.

In support of this construction, I refer to *Latta v. Lowry*, 11 O. R. 517; *Woodhill v. Thomas*, 18 O. R. 277; *Macdonell v. Macdonell*, 24 O. R. 468; and cases cited in *Jarman on Wills*, 5th ed., p. 789.

Costs of all parties out of the principal estate.

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JANUARY 5TH, 1905.

DIVISIONAL COURT.

CITY OF TORONTO v. TORONTO R. W. CO.

*Trial — Postponement — Determination of Questions Arising in another Action Pending—Causes of Action—Identity.*

Appeal by defendants from order of *ANGLIN, J.*, 4 O. W. R. 345, allowing plaintiffs' appeal from order of Master in