

LATCHFORD, J.

FEBRUARY 8TH, 1919.

RE COTÉ.

Will—Construction—Devise to Children—Devise over in Event of Children Dying without Issue—Children Surviving Mother—Estate in Fee—Wills Act, R.S.O. 1914 ch. 120, sec. 33—54 Vict. ch. 18, sec. 1—56 Vict. ch. 20, sec. 1—Devolution of Estates Act, R.S.O. 1897 ch. 127, sec. 13 (1).

Motion upon originating notice for an order determining certain questions arising under the will of Marie E. Coté, deceased.

The motion was heard in the Weekly Court, Ottawa.

H. St. Jacques, for the applicant.

A. C. T. Lewis, for the Official Guardian, representing the infants interested.

LATCHFORD, J., in a written judgment, said that the testatrix devised and bequeathed all her real and personal estate to the child or children that might be born of her marriage with Joseph Coté. The will further provided that, in the event of her child or children dying without issue, her real and personal estate should pass to her father, mother, brothers, and sisters in equal shares.

The testatrix died in 1896, leaving her surviving her husband, who had since died, and two children. At the time of her death she was the owner in fee simple of land in Ottawa.

The executors of the testatrix did not dispose of or convey her real estate within 12 months after her death, nor did they register a caution, as they were entitled to do by an Act respecting the Sale of Real Estate by Executors and Administrators, 54 Vict. ch. 18, sec. 1, and an Act respecting the time for the Vesting of Estates in Heirs and Devisees, 56 Vict. ch. 20, sec. 1. As the lands were not disposed of within the period fixed by the statute then in force, and as no caution was registered, the interest of the executors in them was at an end, and the lands became vested in the children of the testatrix: Devolution of Estates Act, R.S.O. 1897 ch. 127, sec. 13 (1).

But that interest was subject to be divested should the children die without issue. If there should be a want or failure of issue in the lifetime of the two children of the testatrix or at the time of their deaths (Wills Act, R.S.O. 1914 ch. 120, sec. 33), the gift over would become effective.

The executors, if living, could not sell the lands, which 12 months after the death of the testatrix became vested in the