

ch. 159, sec. 38 (3). There were no facts and circumstances shewing that the ordinary rule should not be followed. The solicitor resided and practised in the district of Temiskaming, and the reference should be to the Local Officer at Haileybury. The order should be amended so as to provide for a reference to the Local Officer, and the solicitor should have the costs of his appeal, to be allowed or adjusted on the taxation. J. M. Ferguson, for the solicitor. J. Gilchrist, for the client.

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RE DALY—ROSE, J.—OCT. 24.

*Will—Construction—Widow's Annuity Declared First Charge on Net Income of Residuary Estate—Deficiency—Resort to Corpus—Abatement of Legacies.*—After the question whether the widow's annuity was a first charge upon the income of the residuary estate had been decided (15 O.W.N. 32), directions were given as to the service of notice upon some interested parties who had not been separately represented upon the argument of that question, and the motion came on for further argument in the Weekly Court, Toronto. ROSE, J., in a written judgment, said that the matters discussed were: the respective rights of the widow and of the legatees, in the event of the income from the residuary estate proving insufficient either for the payment of the widow's annuity or for the payment of both the annuity and the legacies; together with the question whether a certain sum directed to be set aside to provide an income for Mary Croft was to be treated differently, in any way, from the other legacies. Upon a consideration of the authorities cited and of some others, the learned Judge reached the conclusion that the true construction of the will was that, if the income from the residuary estate proved insufficient for the payment in full either of the annuity alone or of the annuity and the legacies, resort must be had to the corpus, the annuity being the first charge; and that if, after the annuity was provided for, there was a deficiency, the legacies (including the sum directed to be retained during the lifetime of Mary Croft) must abate proportionately. There was no argument as to what disposition ought to be made of the Mary Croft fund upon Mary Croft's death (either before or after the death of the widow) in case it should turn out that the estate was now insufficient to pay the legacies in full. It would, obviously, be inexpedient to try to dispose of that question in advance. The questions submitted should be answered as above indicated. The costs of all parties ought to come out of the estate. Daniel O'Connell, for the executors and residuary legatees.