LENNOX, J. FEBRUARY 10TH, 1919.

RE LATIMER.

Will—Construction—Gift of Land and Personalty to Son Subject to Payment to Daughter of Sum of Money and Giving her a Home while Unmarried—Death of Son shortly after Death of Testatrix—Provision for Daughter Charged on both Realty and Personalty — Condition — Forfeiture — Impossibility of Literal Performance.

Motion by Agnes O. Latimer for an order determining a question of the proper construction of a clause in the will of Hester Ann Latimer, deceased.

The motion was heard in the Weekly Court, Ottawa.

J. Arthur Jackson, for the applicant.

H. A. Stewart, K.C., for W. H. Latimer and Margaret Augusta Latimer.

LENNOX, J., in a written judgment, said that the testatrix died on the 4th June, 1916. The clause to be interpreted was:—

"I give and bequeath to my . . . son Frederick Morton Latimer all the real estate and personal effects and chattels . . . that I may die possessed of for his own use and benefit forever subject to the payment by him to my . . . daughter Margaret Augusta Latimer . . . of $1,000 to be paid to her in 10 years without interest, and also to give her a home with him wherever he may reside as long as she remains unmarried."

At the time of her death the testatrix was the owner of a farm.

Frederick Morton Latimer died on the 18th October, 1918, seised of all the rights conferred upon him by the will of the testatrix, and without having made a will. Letters of administration of his estate had been granted to his widow, the applicant. He left no children. His next of kin appeared to be his brother, W. H. Latimer, and his sister, Margaret Augusta Latimer. The latter was an adult at the date of the execution of the will.

The question for determination was, whether the clause of the will quoted created a charge upon the real and personal estate devised and bequeathed to Frederick; and the learned Judge was of opinion that it did. This applied both to the $1,000 and the provision for a home.

Reference to Johnston v. Denman (1889), 18 O.R. 66; Withers v. Kennedy (1833), 2 My. & K. 607.

It was contended for the applicant that the provision for "a home" did not constitute a charge; or, if it did, that the gift of