

The application to an oil pump of the principle of "rolling contact" was held patentable.

Judgment of FALCONBRIDGE, J., reversed.

*Aylesworth, Q.C., and A. E. Shaunessy, for the appellant.*

*J. G. Ridout, for the respondent.*

From ARMOUR, C.J.]

[May 11.

LEWIS v. MOORE.

*Settlement—Mortgage—Exoneration—Will—Construction—Direction to sell—Discretion as to time—Legacy—Discretion as to time of payment.*

Certain land subject with other lands to an over due mortgage made by the settlor, was conveyed by him to trustees for his daughter by way of settlement to take effect on his death or her marriage. The conveyance to the trustees contained no covenants by the settlor and no reference to the mortgage, which remained unpaid at the time of the settlor's death.

*Held*, that the mortgage should be paid out of the settlor's general estate.

A testator devised all his estate, real and personal, to trustees upon trust so soon after his death as might be expedient to convert into cash so much of his estate as might not then consist of money on first-class mortgage securities, and to invest the proceeds, and to apply the corpus and income in a specified manner. In a later part of the will there was the following provision: "In the sale of my real estate or any portion thereof I also give my said trustees full discretionary power as to the mode, time, terms and conditions of sale, the amount of purchase money to be paid down, the security to be taken for the balance, and the rate of interest to be charged thereon, with full power to withdraw said property from sale and to offer the same for resale from time to time as they may deem best.

*Held*, that the later clause merely gave a discretion as to the details and conditions of the sale, and did not qualify or override the specific direction to sell as soon after the testator's death as might be expedient.

The testator gave certain shares of his estate to two sons, the provision for payment being as follows: "To each of my sons as they arrive at the age of twenty-three years, or so soon thereafter as my said trustees shall deem it prudent or advisable so to do, they shall pay over one moiety of his share of the corpus of said estate and the accumulated income on said moiety, if any, and the remaining moiety upon his attaining the age of twenty-seven years, or so soon thereafter as they shall deem it advisable so to do."

*Held*, that this direction did not give the trustees an absolute discretion as to the time of payment, but that the general rule, that every person of full age to whom a legacy is given is entitled to payment the moment it becomes vested, applied.

Judgment of ARMOUR, C.J., affirmed.

*McCarthy, Q.C., and W. M. Douglas, for the appellants.*

*Moss, Q.C., and H. J. Wright, for the respondents.*

*Shepley, Q.C., for the respondent, the trustees.*

*W. B. Raymond, for the respondent, the infant.*