

I do not think that this is the real meaning of the will. The testator, I think, intended \$2,000, part of the proceeds of lot 17, to be applied in and towards payment of his debts, and then gave the residue after the debts had been paid—that is, after the residuary estate had been resorted to, to the extent necessary to supplement the \$2,000—to his son Robert.

Reading the will as a whole, and without seeking to import into it technical rules that probably were not present to the mind of the testator, his language seems to me plain and sufficient.

The second question depends upon the effect to be given to the principle laid down in *Re Church*, 12 O.L.R. 18. There the testatrix directed her residuary estate to be divided into four equal shares, three of which were to be paid over at once, and the fourth to be held upon trusts covering an extended period of time. It was held that the expense of administering the trust, after the share in question had been set apart, should be borne by the share itself, and not by the general estate.

Applying that principle to this will, the general estate must bear all the costs of the creation of the trust fund arising from lot 17; but the costs of investing this fund during the minority of the beneficiaries, and of its distribution, must be borne by the fund itself. It is just as if the testator had directed his executors to pay the residue of the proceeds of lot 17 to an independent board of trustees. Until the fund should be created and paid over, the expense would fall upon his general estate. After payment over, the fund would have to bear the costs of its own administration.

Costs of all parties may come out of the estate; of the executors as between solicitor and client.

---

MIDDLETON, J.

MARCH 8TH, 1913.

\*SMITH v. TOWNSHIP OF BERTIE.

*Municipal Corporations—Police Village—Nonrepair of Sidewalk—Liability of Township Corporation for Injury to Person—Municipal Act, R.S.O. 1897 ch. 223, secs. 715-750.*

Argument of question of law upon the pleadings and admissions.

The action was to recover damages resulting from an accident arising, it was said, from lack of repair of a sidewalk in

\*To be reported in the Ontario Law Reports.