

Before his death, the testator sold the farm referred to, and took back from the purchaser a mortgage representing the equity which the testator had in the farm, constituting all the estate of the testator, except the subject of a gift and devise to the widow contained in the 6th paragraph of the will.

After the death of the testator, which took place on the 22nd August, 1903, the executors paid the widow yearly the interest on the said mortgage up to 1915, at which time a doubt arose whether they had authority under the will to continue the yearly payments to her.

John Hobbs, one of the sons named in paragraph 4 of the will, died in July, 1904, unmarried.

The questions for decision were:—

"1. Is the said Sarah Hobbs entitled, during her life or so long as she remains the widow of the said Edward Hobbs, to receive the interest upon his estate and so much of the principal as may be necessary to support and maintain her in the same manner as she was supported and maintained during the lifetime of the said Edward Hobbs?

"2. After the death or marriage of the said Sarah Hobbs, is the estate then remaining wholly divisible between George Hobbs and Robert Hobbs share and share alike?

"3. If, after the death or marriage of said Sarah Hobbs, the estate of the said Edward Hobbs is not wholly divisible between the said George Hobbs and Robert Hobbs, among whom and in what proportion is the same divisible?"

It was strongly contended, on behalf of the parties other than the widow and the two surviving sons, that under the authority of *Re Dods* (1901), 1 O.L.R. 7, the sale and conveyance were *de facto* a revocation of the will as to the land, and that there was therefore an intestacy. That case had been followed in several others; but these cases were distinguishable from the one in hand. There was here no devise of the land—there was only a power to the executors to sell and deal with the proceeds as directed. By his own act, the testator relieved the executors of the duty of selling, but the direction to pay over still remained. He simply relieved them of their duty to this extent, and they were still bound to obey the provisions of the will and continue to pay to the widow just as they did before the doubt arose in 1915.

The answers to the first and second questions should be in the affirmative.

Costs of all parties, fixed at \$25 each, should be paid out of the estate.