

divided between the children. I give to her the money that is deposited at the post-office of Clarence Creek.

"All the residue of my estate not hereinbefore disposed of I give devise and bequeath to my wife Leocadie."

Then he named his executors.

On the 1st June, 1907, Mr. Justice Magee made an order for the partial distribution of the estate, but declined then to construe the will. His order was without prejudice to any application by the widow or executors or any child of the testator for its construction.

I am of opinion that, under this will, the widow takes the whole of the property and estate absolutely, subject to her being divested of it should she marry again. I come to this conclusion upon consideration of the whole will; and in no other way can full effect be given to the clause as to residue. Nothing of the testator's estate will descend to his heirs-at-law. It was not the intention of the testator to die intestate as to any part of his estate in case his widow should not marry again. If she does marry again, then, at once thereafter, all the property shall "be divided between the children."

Apart from the residuary devise, the widow would take an estate for life, with power of disposing of the fee should she not marry again; but the estate for life would be subject to the widow being divested of it, should she marry again. The power of disposing of the property can be exercised by her by will.

For all practical purposes and apart from any technical terms in regard to an estate in fee or an estate for life with power of disposing of the fee if the widow should not marry, either construction will give the same result. The case of *Burgess v. Burrows*, 21 C.P. 426, is very like the present. The language of Gwynne, J., at p. 429 of the report is: "The widow took under the will either a fee simple estate in the property in question, or an estate for life with power of disposing of the fee if she should not marry again, but both estates subject to being divested if she should marry again, in either of which cases the heir is excluded." That case fully discusses the whole question in the alternative as above stated. It came before the Court after the death of the widow. In the present case, the widow is living.

Costs of the executors and widow for whom Mr. Vincent appeared and costs of the Official Guardian to be paid out of the estate.