

BRITTON, J.

MAY 30TH, 1911.

## GARLAND v. EMERY.

*Will—Devise of Land Subject to Legacies—Releases from Legatees Proved but not Produced—Alleged Condition in Releases—Evidence—Corroboration.*

Appeal by the plaintiff from report of the Master at Ottawa, allowing each of the defendants \$350 and interest, part of the legacy of \$500 to which each claimed to be entitled under the will of John Garland. The Master found that no part of these legacies had been paid, but that \$150, part of each, was barred by the Real Property Limitation Act.

Colin McIntosh, for the plaintiff.

R. G. Code, K.C., for the defendants.

BRITTON, J., (after stating the nature of the case as above):—  
It is not necessary to refer to any other of the many matters involved in this action, than these legacies.

John Garland owned lot 5, in the 10th Concession of Goulburn which, with all the rest of his estate, real and personal, he devised to his son Nicholas, subject to the payment of certain legacies, including \$500 to his daughter Eliza Garland, now the defendant, Eliza Murphy, payable \$50, an amount payable out of the estate of James Garland, in one year after the death of the testator; \$100 in 6 years; \$100 in 11 years; \$100 in 14 years; \$100 in 17 years; and \$50 in 20 years: And to his daughter Mary Garland, now the defendant Mary Emery, \$500, payable \$50 out of estate of the late James Garland, in one year after the death of the testator; \$100 in 7 years after death; \$100 in 12 years; \$100 in 15 years; \$100 in 18 years; \$50 in 20 years.

John Garland died on the 26th January, 1890, Nicholas Garland died on the 20th March, 1909, intestate and without issue. The defendant Mary Emery is the administratrix of Nicholas Garland. This litigation is between the widow and the sisters of Nicholas.

The plaintiff and her husband lived together, but, unfortunately, she was absent from home when her husband died. She had been absent from home for about two months. She saw the releases in question in this action. These releases were in her husband's possession. He kept them in a "grip" or small valise in his bed-room. She also states that these defendants were paid