

FERGUSON, J.

MARCH 5TH, 1902.

WEEKLY COURT.

RE ASSELSTINE.

*Statutes—Settled Estates Act—Who may not Petition—Partition Act
—Who may not Partition.*

Petition by executor and devisees of Sarah Asselstine, deceased, for order for sale under Settled Estates Act of certain land, or for leave to petition for partition of it or part of it. Michael Asselstine devised the land in question in 1870 to his two daughters Elizabeth and Sarah as tenants in common. Sarah died in 1885, and by her will devised her half interest to her sister for life, with remainder to certain nephews and nieces, the petitioners. Her will conferred upon the petitioner, the executor, a power to sell her half interest with the consent of the devisee, the life tenant, Elizabeth Asselstine.

J. H. Moss, for petitioners.

E. D. Armour, K.C., and G. F. Ruttan, Napanee, for Elizabeth Asselstine. Without the consent of the tenant for life, there is no jurisdiction under sec. 22 of the Settled Estates Act: *Re Taylor*, 1 Ch. D. at p. 431, 3 Ch. D. 145, construing sec. 16, the corresponding section in the English Act; see also *Ex p. Puxley*, 2 Ir. Eq. 237; *Re Atkinson*, 30 Ch. D. at p. 612, per Pearson, J.; *Re Merry*, 15 W. R. 307; *Re Hurd*, 2 H. & M. at pp. 201, 202, per Wood, V.-C.; *Middleton's Settled Estates Act*, pp. 30, 31; *Re Dennis*, 14 O. R. 267; and as to partition, *Murcar v. Boulton*, 5 O. R. 164, and *Fisken v. Ife*, 28 O. R. 595.

Moss, in reply, referred to the Partition Act, sec. 5: *Lawlor v. Lawlor*, 9 P. R. 455; *Martin v. Knowllys*, 8 T. R. 145.

FERGUSON, J., gave oral judgment at the opening of the Court the day following the argument, holding that under neither Act could an order be made.

Motion dismissed with costs.

J. Bawden, Kingston, solicitor for petitioners.

Morden & Ruttan, Napanee, solicitors for Elizabeth Asselstine.

STREET, J.

MARCH 7TH, 1902.

CHAMBERS.

CLERGUE v. MCKAY.

Discovery—Production — Privilege — Letters between Solicitor and Client—Nature of, must be Set Forth in Affidavit

Gardner v. Irvin, 4 Ex. D. 49, *O'Shea v. Wood*, [1891] P. 286, and *Ainsworth v. Wilding*, [1900] 2 Ch. 315, followed.