

HODGINS, J.A.

OCTOBER 25TH, 1920.

## RE VAIR.

*Executors—Money Borrowed for Repairs—Apportionment—Capital Account—Interest Account—Tenant for Life—Remaindermen—Mortgage—Interest—Costs.*

An appeal by the executors of John Vair, deceased, from a report of the Local Master at Napanee.

The appeal was heard in the Weekly Court, Toronto.

J. I. Grover, for the appellants.

W. Lawr, for the testator's widow, the respondent.

HODGINS, J.A., in a written judgment, said that objection was taken to the interest on a mortgage and certain repairs being charged to capital account.

The widow was life-tenant, and by the will the executors were to pay over the rents and profits to her quarterly during her life and widowhood. The estate consisted of "Ontario Hall," in the city of Belleville.

The executors were in possession of the property, and the Local Master had apportioned the repairs between the life-tenant and those in remainder. The executors received authority to raise \$700 on mortgage, and did so. The \$700 was expended in repairs allowed in report of 1918, \$287.37; part of an account for repairs, \$158.30; costs of various parties, \$220.50; and interest for two years on the sum so raised, \$84. The only items challenged were the \$158.30 and the \$84.

Reference to *In re Hotchkys* (1886), 32 Ch. D. 408, at p. 416.

Here the Local Master had charged only part of the repairs to capital account, namely, what was paid for repairing the roof, and the life-tenant did not object to what had been apportioned against her.

As the Local Master had exercised his discretion, and as the repairs seem to be of a nature to benefit the inheritance, his decision could not be disturbed.

In regard to the interest on the mortgage, having in view the purpose for which the money was raised, the principle that any reduction of capital must lessen the life-tenant's income must be applied here: *In re Freman*, [1898] 1 Ch. 28; *Re Elliot* (1917), 41 O.L.R. 276.

In applying these decisions to the case in hand, and bearing in mind that what is equitable is what ought to be done, it is clear that only interest on that part of the mortgage attributable to