

Defendants should plead in 8 days (or such further time as may be agreed on).

The costs of the motion will be in the cause, as the action is of an unusual character.

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TEETZEL, J.

JUNE 3RD, 1907.

WEEKLY COURT.

RE CHILDS.

*Trusts and Trustees—Sale of Unproductive Land—Purchase Money—Apportionment—Tenant for Life—Income—Capital—Interest—Costs.*

Motion by the tenant for life under the trusts of a will for an order and direction as to whether or not any portion, and, if any, what portion, of the purchase price of certain lands included in the trusts, was payable to the applicant.

W. T. Evans, Hamilton, for the applicant.

W. Bell, Hamilton, for the executor.

G. C. Thomson, Hamilton, for the Boys' Home.

W. W. Osborne, Hamilton, for the Aged Women's Home.

J. L. Counsell, Hamilton, for the Girls' Home.

TEETZEL, J.:—I think this matter is governed by *Re Clarke*, 6 O. L. R. 551, 2 O. W. R. 980, following *In re Cameron*, 2 O. L. R. 756, and *Walters v. Solicitor for the Treasury*, [1900] 2 Ch. 107; and therefore the life tenant, Mrs. Carry, is entitled to an apportionment of the \$2,500.

The registrar will ascertain what sum invested at the testator's death (30th April, 1894), would have produced \$2,500 when the land was sold, interest being calculated at  $4\frac{1}{2}$  per cent. per annum with half-yearly rests. The sum so ascertained will represent capital, and will be deducted from the \$2,500, and the balance will represent deferred income, and will be payable to the applicant.

I make no order respecting other sales of unproductive real estate heretofore made, as there is not sufficient material filed to enable me to do so satisfactorily. Nor shall I make directions as to future sales.