The farm was sold by the testator on the 21st April, 1911, for $3,500, and on the same day a mortgage was given back to the testator for $3,000, part of the purchase-money; $500 being paid in cash. At the time of his death, the testator owned a lot of land in the city of Woodstock, valued at $800, and he had $53.85 in cash, the $3,000 mortgage, and no other estate, real or personal.

The questions raised were: (1) whether the son George was entitled to the legacy of $1,500; and (2) whether the lot in Woodstock passed under the will.

The motion was heard in the Weekly Court at Toronto.

W. T. McMullen, for the executors.

S. G. McKay, K.C., for George A. Graham.

R. N. Ball, for Percy Yeo.

E. C. Cattanach, for Irene Graham, an infant.

CLUTE, J., said that, reading the will and the codicil together, it could not be doubted that it was the intention of the testator that his son George and the two daughters and the granddaughter should be the beneficiaries of his estate to be realised from the sale of the farm. If the son George was not entitled, neither were the daughters, for they also were to be paid out of the proceeds of the farm. George was, therefore, entitled to his legacy of $1,500.

Reference was made to Re Dods (1901), 1 O.L.R. 7; Morgan v. Thomas (1877), 6 Ch.D. 176; In re Alexander, [1910] W.N. 36, 94; In re Clifford, [1912] 1 Ch. 29.

As to the Woodstock lot, there was an intestacy. The gift was not to the executors of all the real and personal estate; but the opening words of the will, "I give devise and bequeath all my real and personal estate of which I may die possessed in the manner following," were followed by a direction to the executors to sell the farm, and there were no words in the will or codicil to include the Woodstock lot.

Order declaring accordingly; costs of all parties out of the estate.