

KELLY, J.

APRIL 17TH, 1918.

RE McLEAN.

LE JEUNE v. BUTLER.

Will—Construction—Annuity to Widow—First Charge on whole Estate—Payment out of Corpus if Income of Estate Insufficient—Other Annuities—Order of Payment—Specific Legacy of Lump Sum Payable at Death of Widow—Interest—Distribution of Residue—Annuities Payable to Heirs on Death of Annuitants in Lifetime of Widow.

Allan Neil McLean, who died on the 25th May, 1893, by his will gave all his estate and effects to his executors and trustees for the purpose of distribution, as follows:—

He gave his wife "an annuity of \$1,500 . . . as first charge on my estate." He then gave to his son and three daughters an annuity of \$300 each; to his granddaughter Maude Brown \$150 to be paid to her half-yearly; and to his sister Isabella Harriet McLean \$150 payable half-yearly during her life. Then there was this clause: "I hereby wish after the payment of legacies that any interest or dividends from securities held by me . . . may be deposited at interest . . . and which may be drawn out to pay annuities if sufficient from other sources are not collected, and I request my said trustees or executors as amounts due are paid off to reinvest the same as best they can, keeping the amount at interest, to pay the above annuities until the death of my said wife, then I desire that my estate shall be divided share and share alike to my son and his three sisters or should any one of them die before the said division takes place then their shares to their heirs or as they may desire in writing to leave it to. I leave to Maude Brown, my grandchild, \$4,000."

William Allan McLean, the son and one of the executors, died in 1901, leaving a widow and three children.

By a judgment pronounced in November, 1916, in the action of Le Jeune v. Butler, the Imperial Trusts Company of Canada was appointed trustee under the will of Allan Neil McLean, and a reference to the Master in Ordinary was directed, etc.

The new trustee now moved for an order or judgment declaring the true construction, meaning, and effect of the will, in regard to questions stated in a certificate of the Master.

The motion was heard in the Weekly Court, Toronto.

A. C. McMaster, for the trust company, the applicant.

J. H. Fraser, for the plaintiff in the action.

A. McLean Macdonell, K.C., for the defendant Mary Ann McLean, the widow of Allan Neil McLean.