LENNOX, J., said that the motion first made before the Master in Chambers was unnecessary, and should be dismissed with costs. One McGibbon, administrator with the will annexed, was served, but did not appear; probably service upon him was unnecessary. Counsel for William Murray also insisted that he was not duly served, and that the matters in question could not be dealt with upon an originating notice: neither of these objections was sustainable.

By the will, lot 9 in the 4th concession of Esquesing was given to William Murray, "subject to the rights and privileges herein given to my daughter Margaret Murray and my granddaughter Mira Murray" (the applicant) "to the use of the dwelling-house and the orchard and two acres of land." The testator also gave Mira Murray $50 a year, after the expiration of a lease, "till she attains the age of 21 years or so long as she remains in the said dwelling-house or until she marries, whichever event shall first happen." There was a similar provision for the testator's daughter Margaret. There were provisions in favour of the same daughter and granddaughter giving each an undivided half of the dwelling-house, orchard, and the two acres, "so long as she shall continue to dwell in the said house or until she shall get married, whichever event shall first happen." By another clause, the daughter and granddaughter were "to have one horse and two cows kept and stabled," and "all the wood required by them . . . from off the said lot," and certain other privileges; but no specific period of enjoyment was mentioned.

By a judgment of this Court, in an action in which the daughter and granddaughter were plaintiffs and the respondent was one of the defendants, it was declared that, in lieu of the privileges referred to, the daughter and granddaughter should be paid an annual sum of $250 each, so long as they remained entitled thereto under the will and judgment.

Margaret died on the 7th August, 1914. Since January, 1915, Mira had not actually lived in the house—being a schoolmistress, she was necessarily absent; but she swore that she regarded it as her home, intended to occupy it from time to time, and had no intention of abandoning it. Abandonment is a question of fact, often involving the question of intention: James v. Stevenson, [1893] A.C. 162; Vansickle v. James (1915), ante 146.

The first question submitted was in effect: what portion of the $250 payable for the year ending on the 16th April, 1915, is