

*Held*, that the words of survivorship referred to the period of distribution, namely, the youngest child attaining twenty-one years of age, and, therefore, only the children then living were entitled to share in the residue, and this applied as well to the shares to be taken by the children as to the share set apart for the widow.

*A. G. F. Lawrence*, for the executors. *G. G. S. Lindsey*, for the two adult children. *G. F. Heyd*, for the other adult children. *A. J. Boyd*, for the infant children.

Street, J.]

[Dec. 3, 1898.

RE TOWN OF CORNWALL AND THE CORNWALL WATERWORKS CO.

*Arbitration and award—Payment of amount of award into Court—Waterworks Company—Mortgagees—Bondholders.*

SECS. 445 and 446 of the Municipal Act, R.S.O. (1897), c. 223, which authorizes the payment of money awarded, with interest and costs into Court, apply to awards made under the Gas and Waterworks Company's Act, R.S.O. (1897), c. 199; and where the amount so paid in was less than the amount properly payable in, the town corporation, who had paid the money in, were allowed to amend their order for payment in and to pay in the proper amount, but such payment was only to date from the obtaining of the amended order. There is no objection to such payment in that a controversy exists between the parties to the arbitration as to their respective rights thereunder; but mortgagees and bondholders, who had not been made parties to the arbitration, were not to be affected thereby.

The fact of the vice-president of a loan company, who were mortgagees in trust for the bondholders, writing a letter enclosing a draft to the waterworks company to enable the loan company to obtain the amount of the award and interest which had been paid into a bank by the town corporation to the joint credit of the Waterworks Company and the mortgagees, but the writing of which letter was never authorized by the bondholders, and was outside the powers conferred by the mortgage, and which was repudiated by the bondholders, was held not to constitute a waiver of the rights of the bondholders and mortgagees.

*Bruce*, Q.C., for mortgagees and bondholders. *Aylesworth*, Q.C., for the Waterworks Company. *Armour*, Q.C. for the town corporation.