

in full, and that Agnes Fahey, mentioned in para. 20, died without leaving any issue her surviving.

By para. 20, the testatrix directed her executors and trustees to invest the sum of \$20,000 and to pay the interest thereof to Agnes Fahey "during her life, and after her decease to pay the interest to any children she may leave her surviving equally until they attain the age of 30 years, when they shall divide the same equally among such children, but, in case she leaves no child or children her surviving, then the same shall be added to and disposed of in the same manner as the residue of my estate is herein directed to be disposed of."

The questions submitted by the applicants were:—

(a) Should the money invested for Agnes Fahey be paid into the residue of the estate and be disposed of as directed by para. 32 of the will (the residuary clause)?

Or (b) should the money be paid in satisfaction of the specific legacies which were abated by reason of the insufficiency of the estate?

(c) If the said money should be disposed of as directed by para. 32, are the heirs or devisees of Gideon Perrie, who died on the 17th January, 1910, entitled to one-third thereof?

The motion was heard in the Weekly Court at Toronto.

G. Lynch-Staunton, K.C., for the applicants.

J. G. Farmer, K.C., for T. M. Waddell and J. J. Barry.

M. J. O'Reilly, K.C., for the Kirk estate and others.

F. W. Harcourt, K.C., for infants (unborn).

M. Malone, for D. A. Fletcher.

FALCONBRIDGE, C.J.K.B., in a written judgment, said that, on the principles laid down in *In re Tunno* (1890), 45 Ch.D. 66, and *Arnold v. Arnold* (1834), 2 My. & K. 365, at p. 374, the answer to question (a) should be "No," and to question (b), "Yes." Owing to these answers, it was unnecessary to consider question (c).

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