

C. J. Holman, K.C., for Susannah Morton, widow.

W. H. Blake, K.C., for Phœbe Holbert and Mark Morton, brother and sister of testator.

S. Masson, Belleville, for other brothers and sisters of testator.

FALCONBRIDGE, C.J.:—The following is the will:—

“First, I hereby will that William Henry Morton, of the township of Huntingdon, be my sole executor.

“Second, I will and bequeath all the property of which I am possessed, both real and personal, to my wife Susannah Morton, for her sole use and benefit so long as she remains my widow, but in the event of her marrying again then I will that my sister Phœbe Holbert be paid from my estate the sum of \$500, also I will that in case my wife marries again my brother Mark Morton be paid the sum of \$500 from my estate.”

The first question is whether the widow takes an estate in fee subject to the payment to Phœbe Holbert and Mark Morton of the sum of \$500 each in the event of the widow re-marrying. I have no doubt that the answer to this question ought to be in the affirmative. There is no disposition made of the balance of the estate should she re-marry. This fact not only involves the application of the rule that the Court will lean against an intestacy, but I think that it also throws light upon the main question. In other words, I think it plain that what the testator intended was that the sole penalty which he imposed upon her in the event of her marrying again was to pay these two sums. If the testator had intended any further or other diminution of the provision which he made for the widow, he would, no doubt, have made a direction as to whether Phœbe Holbert and Mark Morton should take the \$500 each in addition to their distributive share as on an intestacy.

The nearest authority to which I have been referred is *In re Mumby*, 8 O. L. R. 286, 4 O. W. R. 10. It is not exactly in point, but it is to some extent on the same lines.

The answer will, therefore, be that she is entitled to the fee simple in the land, and an absolute interest in the personalty, subject only to the before-mentioned payments in the event of her re-marrying. This judgment renders it unnecessary to answer the other questions. As I think that the point was quite arguable, I must give costs to all parties out of the estate, even though that means costs payable by the widow.