

proceeds among my wife and my aforesaid children and my said grandchild, each of them taking one equal share thereof, the share of any child or grandchild under age to be retained by my said trustees until he or she reaches that age."

The widow died on the 8th May, 1913, before any of the rest and residue of the property had been sold.

The questions propounded were: (1) whether the widow took any interest at the time of her death in the residue of the property not then sold or realised; and (2), if she had any interest in such residue, whether on her death the same was redivisible among the children of William Ward mentioned in the will and the grandchild, or whether the same belonged to the personal estate of the widow and should be divided among her children only, she having died intestate.

The motion was heard in the Weekly Court at Toronto.

W. H. Lockhart Gordon, for the executors and the adult children of the second marriage.

H. C. Fowler, for Frank Ward and (by appointment of the Court) for the infant Reginald Ward.

F. W. Harcourt, K.C., Official Guardian, for the infant grandchild, Gladys Serge.

BOYD, C.:—The clause in doubt in this will reads thus: "The residue . . . to be sold at such time and in such manner as may seem to my trustees best for my estate, it being left to their absolute discretion at what time and on what terms they shall sell any of my said property, and on realising same or any portion thereof to divide the proceeds among my wife and . . . children." True it is the enjoyment is to be only after the sale, and the widow was then dead, and so could not take personally; but, if the whole tenor of the will shews that the postponement was intended to serve the best interests of the estate, the prospective benefit will be construed as vested in the beneficiary, though death may come before the actual enjoyment. In this will the testator delegates to the trustees the trust of selling the estate when it shall seem to them "best for the estate," and that is the testator's reason for not having the residue sold and divided at once.

This language is sufficient under the authority of *Packham v. Gregory* (1845), 4 Hare 396, 397, as I read it, and this will, to warrant the declaration that the share of the deceased widow in the residue was vested and would pass to her next of kin as part of her estate, she having died intestate, as I understand.