

MEREDITH, C.J.]

[April 1.

TORONTO GENERAL TRUSTS CO. v. IRWIN.

Will—Construction—Devise—Incumbrances—Exoneration—Widow—Dower—Election—Remainder—Acceleration.

By paragraph 3 of his will the testator, who died in 1895, devised house No. 35, east of Broadview avenue, in the city of Toronto, with some land in the rear of it, until 1st January, 1890, to his wife, and from and after that to his brother, "his heirs and assigns forever, free from all incumbrances." This property, together with house No. 45, which, by paragraph 6, he devised, with other lands, to his wife for life, and after her decease to his brother, his heirs and assigns, subject to certain legacies, was subject at the date of the will to a mortgage for \$1,200 made by the testator, which was subsequently discharged and replaced by a mortgage for \$1,300 on the same lands, which was that subsisting at the date of the death. By paragraph 4 the testator bequeathed to his wife certain leasehold premises held by him at the date of his will. The term, however, expired in his lifetime, and nothing passed to his wife under this paragraph. By paragraph 5 the testator directed his wife to pay off the mortgage for \$1,200, and any other incumbrances upon the property devised by paragraph 3, and declared that the bequests made to the wife by paragraphs 3 and 4 were made to her for that purpose.

Held, that the effect of the will was to exonerate house No. 35, to the extent of the interest in it devised to the brother, from the payment of the mortgage, and to cast the burden of the payment of it upon the residuary estate.

2. That the devisee of house No. 35 was not entitled to have it discharged of the dower of the widow, she having elected to take her dower instead of the provision made for her by the will.

3. Paragraph 7 provided, in the event of the brother dying before the wife, for a sale of what the will described as "all my said property," and directed that the proceeds of the sale should be invested, and the interest of the investment paid in certain proportions to M. S. and M. J. G. for their lives and the life of the survivor, and for the division of the corpus after the death of the survivor among certain persons named.

Held, that the provisions of paragraph 7 applied only to the devise contained in paragraph 6, and not to that in paragraph 3.

4. That the effect of the disclaimer by the widow of the provision made for her by the will was to accelerate the brother's remainder and make it an estate in possession.

T. W. Howard, for the plaintiffs.

W. Davidson, for the infant defendants.

George Lindsay, for the defendant Richard Irwin.

T. H. Bull, for the defendants Stewart and Glassie.

Skeans, for the defendant Martha Irwin.