

The motion was heard in the Weekly Court at Ottawa.

T. S. Dunlevie, for the applicants.

N. A. Belcourt, K.C., for the widow of the testator's adopted son.

MIDDLETON, J.:—By his last will and testament, dated the 17th March, 1911, James Hickey, who died on the 13th August, 1913, directed as follows: "I give and bequeath to my wife, Margaret Louisa Hickey, the sum of \$5,000 (subject to be decreased as hereinafter provided) in trust to invest the same, with power from time to time to vary the investments thereof, and to apply the income arising therefrom in payment of all premiums on the policy of insurance of \$1,000 upon the life of my adopted son, Charles Groulx, alias Charles Groulx Hickey, in the Equitable Life Assurance Company of the United States, number 1304853, as and when the same become payable, and to pay the balance of the said income and any portion of the principal which in the discretion of my said wife may be necessary towards the maintenance of my said adopted son, Charles Groulx Hickey, and after his death to pay any portion thereof then remaining unto *his wife, Celina Isabella Hickey*, provided however, as I am at my own expense now maintaining my said adopted son, and as I have estimated the present cost to me of his maintenance to be \$400 a year, I therefore direct that for every year I shall live after the date of this my will, the sum of \$400 shall be deducted from the said sum of \$5,000, and instead of the sum of \$5,000 being invested by my wife as aforesaid the said sum of \$5,000 shall be decreased by an amount obtained by multiplying the sum of \$400 by the number of years transpiring between the date of this my will and the date of my death."

The adopted son, Charles Groulx Hickey, died on the 10th September, 1911, some six months after the date of the will and two years before the death of the testator. His widow, Celina I. Hickey, now claims to be entitled to receive the \$5,000. The testator's widow, on the other hand, contends that, by reason of the death of the son during the testator's lifetime, the entire gift fails and the son's widow takes nothing.

I do not so read the will. I think the intention of the testator was to set apart the sum of \$5,000 for the benefit of his son and his son's wife, and that upon the death of the son his widow takes the \$5,000, subject to the abatement provided for by the testator.

The son's widow contends that this abatement should be limited to \$200, being a half year's maintenance of the son.