

same can be disposed of and sold for the best interest of my estate within three years, for the purpose of fully carrying into effect the true intent and meaning of this my will."

The testator died on the 7th November, 1894, and probate was soon afterwards granted to Lucy Emma Henderson, the present vendor, the other executor named in the will having predeceased the testator.

The question for determination was, whether, by reason of the later provision in the will, the time for the exercise of the power of sale was limited to three years from the testator's death.

The motion was heard in the Weekly Court at Toronto.

J. L. Counsell, for the vendor and the daughters of the testator.

Shirley Denison, K.C., for the purchaser.

F. W. Harcourt, K.C., for Annie L. Finch and others in her class and for unborn persons possibly interested.

KELLY, J., referred to *Scott v. Scott* (1858), 6 Gr. 366; *Peace v. Gardner* (1852), 10 Hare 287; *Re Kaye and Hoyle's Contract* (1909), 53 Sol. J. 520; *Peters v. Lewes and East Grinstead R.W. Co.* (1881), 18 Ch.D. 429; *In re Tweedie and Miles* (1884), 27 Ch.D. 315; *Edwards v. Edmunds* (1876), 34 L.T.R. 522; *Dart on Vendors and Purchasers*, 7th ed., p. 65; *Jarman on Wills*, 6th ed., p. 613; *Halsbury's Laws of England*, vol. 28, p. 149, note (p); and said that, reading the whole will and considering the purposes for which the power was evidently intended to be given, he was of opinion that the power was not exhausted or extinguished at the end of the three years mentioned in the later clause of the will; that the mention of the three years was directory rather than imperative—shewing the desire of the testator with reference to a sale, which must be considered along with the direction as to the best-interest of the estate. He was further of opinion that, in the circumstances of the case, the delay in selling was not unreasonable, in any event to such extent as to affect the power of sale in the executrix; and that there was still in the executrix the power to sell and make title to the purchaser.

Order declaring accordingly; no costs as between vendor and purchaser; costs of the vendor and of the parties other than the purchaser to be paid out of the estate, those of the vendor as between solicitor and client.