

NOTES OF CASES.

SUPREME COURT OF CANADA.

OTTAWA, March, 1881.

ALMON et al., Appellants, and LEWIS et al., Respondents.

Will—Annuities—Sale of Corpus to pay.

The bill in this case was filed by the executors and trustees under the will of John Robertson, deceased, to obtain the direction of the Court, as to the rights of the several persons interested under the will.

John Robertson died on the 3rd August, 1876, leaving a will dated 6th Aug. 1875, and a codicil, dated 21st July, 1876. By the will he devised to his widow an annuity of \$10,000 for her life, which he declared to be in lieu of her dower. This annuity the testator directed should be chargeable on his general estate. The testator then devised and bequeathed to the executors and trustees of his will certain real and personal property particularly described in five schedules marked respectively A, B, C, D and E, annexed to his will upon these trusts, viz:—Upon trust during the life of his wife, to collect and receive the rents, issues and profits thereof which should be, and be taken to form, a portion of his "general estate;" and then from and out of the general estate during the life of the testator's wife, the executors are to pay to each of his five daughters the clear yearly sum of \$1,600 by equal quarterly payments, free from the debts, contracts and engagements of their respective husbands." Next, resuming the statement of the trusts of the scheduled property specifically given, the testator provides, that from and after the death of his wife, the trustees are to collect and receive the rents, issues, dividends and profits of the lands, etc., mentioned in the said schedules, and to pay to his daughter Mary Allen Almon, the rents, etc., apportioned to her in schedule A; to his daughter Eliza, of those mentioned in schedule B; to his daughter Margaret, of those mentioned in schedule C; to his daughter Agnes, of those mentioned in schedule D; and to his daughter Laura, of those mentioned in schedule E; each of his said daughters being charged with the insurance, ground rents, rates and taxes, repairs and other expenses with or incidental to the management and upholding

of the property apportioned to her, and the same being from time to time deducted from such quarterly payments. The will then directed the executors to keep the properties insured against loss by fire, and in case of total loss, it should be optional with the parties to whom the property was apportioned by the schedules, either to direct the insurance money to be applied in rebuilding, or to lease the property. It then declared what was to be done with the share of each of his daughters in case of her death. In the residuary clause of the will there were the following words:—"The rest, residue and remainder of my said estate, both real and personal, and whatsoever and wheresoever situated, I give, devise and bequeath the same to my said executors and trustees, upon the trusts and for the interests and purposes following." He then gives out of the residue a legacy of \$4,000 to his brother Duncan Robertson, and the ultimate residue he directs to be equally divided among his children upon the same trusts with regard to his daughters, as are hereinbefore declared, with respect to the said estate in the said schedules mentioned.

The rents and profits of the whole estate left by the testator proved insufficient, after paying the annuity of \$10,000 to the widow and the rent of and taxes upon his house in London, to pay in full the several sums of \$1,600 a year to each of the daughters during the life of their mother, and the question raised on this appeal was whether the executors and trustees had power to sell or mortgage any part of the corpus or apply the funds of the corpus of the property to make up the deficiency.

Held, on appeal, that the annuities given to the appellants and the arrears of their annuities are chargeable on the *corpus* of the real and personal estate, subject to the right of the widow to have a sufficient sum set apart to provide for her annuity.

Weldon, Q.C., for the Misses Robertson.

Gilbert, for Mrs. Almon.

Kaye, Q.C., for Respondents.

COURT OF QUEEN'S BENCH.

MONTREAL, March 22, 1881.

DORION, C.J., MONK, CROSS, & BABY, JJ. -
NOEL (petr. below), Appellant, and THE CORPO-