

The motion was heard in the Weekly Court, London.

M. P. McDonagh, for the executor.

F. F. Harper, for the estate of Crowell Smith.

R. G. Fisher, for the testator's widow and two of the next of kin and legatees.

W. R. Meredith, for the committee of one of the next of kin.

H. S. Blackburn, for other next of kin and legatees.

MEREDITH, C.J.C.P., in a written judgment, said that the difficulties arose from the failure to provide in the will for an event which had happened—the testator's widow had outlived her son Crowell. The testator died in 1909; Crowell, in 1913; the widow was still living.

Notwithstanding the oversight, if in the whole will words could be found which sufficiently disposed of the estate, in the event which had happened, effect might be given to them; otherwise there was an intestacy as to that part of the estate which was in question in this application. The rest of the estate was fully and clearly disposed of in the will.

By clause 2 of the will, the testator devised a farm to Crowell for his life, subject to certain legacies and an annual payment of \$40 to the widow, charged upon the land. By clause 3, the testator devised the farm, subject to Crowell's life estate, to his executors in trust to sell it upon the death of Crowell and to divide the proceeds amongst the testator's daughters and his other son.

With regard to clause 3, the learned Chief Justice said that the disposition therein made was only in case of the death of Crowell after payment of all the bequests, including the annual sum his mother—to hold otherwise would make his death a revocation of the will to the extent to which such legacies remained unpaid at his death, contrary to the plain purpose of the testator expressed in other parts of the will.

By clause 4, the testator directed that Crowell should furnish the widow with 6 cords of firewood every year during her life; and, in event of Crowell failing to comply with any of the conditions of the will or failing to make any of the payments, he should forfeit his right to the land, and the executors should sell it and apply the proceeds in manner directed.

This 4th clause, the Chief Justice said, seemed to apply only to an actual default or failure of Crowell to pay the legacies—not to the case of his death without default or failure. Upon his death the consideration for the payment by him of the legacies which had not become payable failed, and they ceased to be a charge upon the land, which was devised to him for life only. The clause