though the gift of them is limited to several persons successively for life and then to their children.

On this branch of the case I agree with the judgment of my brother Middleton.

The result is that in my opinion the appeal fails and should be dismissed, and that the costs of all parties of the appeal, those of the executors between solicitors and client, should be paid out of the estate.

HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MAGEE and HON. MR. JUSTICE HODGINS agreed.

SUPREME COURT OF ONTARIO.

FIRST APPELLATE DIVISION. MAY 1ST, 1914.

RE ROBERT G. BARRETT.

6 O. W. N. 267.

Will—Construction—Gift to Daughter—Moneys in Bank for Household Expenses—Large Sum in Bank at Death—Trust—Surplus—Resulting Trust—Sale of Devised Lands — Mortgages—Personalty — Claim of Devisee Disallowed — Mortgage on Wife's Property—Assumption of—Charge on Real Estate.

MIDDLETON, J., 25 O. W. R. 735; 5 O. W. N. 805, *held*, that a gift to the daughter of a testator of "whatever sum or sums of money may be to my credit in any bank or upon my person or in my domicile at the time of my decease for the purpose of enabling my said daughter to meet the immediate current expenses in connection with housekeeping," where there was only a small sum in the bank at the date of the will but $17,200 at the time of the death of the testator, created a trust for the purpose expressed and all moneys not needed for that purpose belonged to the estate as a resulting trust.

Re West, [1901] 1 Ch. 84, referred to.

That where specific houses were afterwards sold and mortgages taken back, the devisees had no right of title to such mortgages.

Re Dods, 1 O. L. R. 7, followed.

SUP. CT. ONT. (1st App. Div.) *held*, that while it was very probable that the testator would have made a different provision as to the disposition of the legacy had he known at the time he made his will that so large a sum would be at his credit at the time of his decease, yet the Court could not place a different construction on the language of the testator from that which would be placed upon it if the fund had been only $500.

Hart v. *Tribe*, 18 Beav. 215, followed.

Above order varied by declaring that the daughter took the $17,200 absolutely.

(See *Re Beckingham*, 25 O. W. R. 564.—Ed.]

Appeal by the three unmarried daughters of the testator from an order of HON. MR. JUSTICE MIDDLETON, 25 O. W. R. 735, dated 27th January, 1914, made upon an originating notice for the construction of the will of the testator.