

Even without the authority of *Re McGill* (1913), 4 O.W.N. 565, and the cases there followed, the vague indication of the wish of the testator as to the investment of the proceeds of the real estate, "as directed by my executors," would be inoperative. It is an alternative only—the widow may, if necessary, use the whole for living expenses.

In the result, the whole of the proceeds of the life insurance policies and the whole of the residue of the real and personal estate of the testator, after debts and legacies paid, vest absolutely in the widow, subject as to both to be divested if and when she remarries—and, if she dies without having remarried, she may dispose of all by will.

The duties of the executors are limited to the payment of debts and legacies and the conveying and transferring of the real and personal estate to the widow.

Costs of all parties, those of the executors as between solicitor and client, to be taxed and paid out of the estate.

ONTARIO POWER CO. OF NIAGARA FALLS v. TORONTO POWER
CO. LIMITED.—MIDDLETON, J.—APRIL 6.

Contract—Supply of Electrical Energy—Payment for—Ascertainment of Amount—Settling Judgment.—Judgment in six actions between the same parties was given by MIDDLETON, J., on the 27th March, 1919: see 16 O.W.N. 94. In settling the terms of the judgment to be entered counsel were heard, and the learned Judge made a memorandum as follows: The question now raised upon the settlement of the amount payable is concluded by the judgment given. The amount contracted for is the output of one generator at its normal rating of 10,000 K.V.A. The purchaser must pay not for the K.V.A. but for the energy taken, i.e., the K.W. (unless the power factor falls below 90 per cent.), and the difference between K.V.A. and K.W. must be the vendor's loss. There is no obligation to take under the contract when the K.V.A. exceed 10,000. If more electricity should be taken, and no other right to take existed, it might be deemed to be under the contract, but when the right to have more than the contract called for did exist, then the excess is attributable to that other right. This is the effect of the former judgment, and the learned Judge does not attempt to reconsider it.