

The question submitted was whether the children took any estate or interest in the estate under the will.

W. H. Blake, K.C., for the applicant.

F. W. Harcourt, for the five infant children.

No one appeared for the adult child.

STREET, J.—I think it is clear that the widow takes the absolute ownership of the real and personal estate of the testator, and that her children take no interest in it under the will. This is all that could come up in administration proceedings, and it is as far as Rule 938 permits me to go in interpreting the will: *Re Sherlock*, 18 P. R. 6; *Re Whitty*, 30 O. R. 300.

The administratrix has the ordinary power, without regard to the will, of selling so much of the estate as may be necessary for payment of debts. The question as to whether, having paid the debts, she could sell the rest of the property without the consent of the children, is one which will arise if she desires to sell it under those circumstances: but I have no authority to determine it under Rule 938.

The costs of the application should be paid out of the estate.

STREET, J.

NOVEMBER 24TH, 1904.

CHAMBERS.

RE MARTIN.

*Will—Construction—Devise — Restraint upon Alienation —
Summary Application under Rule 938—Scope of.*

Application by devisees under Rule 938 for a construction of certain clauses of the will of Moses Martin, deceased.

J. M. Ferguson, for the devisees, the applicants.

J. E. Day, for the executors.

J. A. Walker, K.C., for the Chatham Loan Co.

STREET, J.—The testator devised to each of his five sons fifty acres of land in Dover East, subject to the payment of certain charges to other members of the family. At the conclusion of these devises he declared in his will as follows: "None of my sons will have the privilege of mortgaging or selling their lot or farm aforesaid described, but if one or more of these lots have to be sold on account of mismanagement the executors will see that same will remain in the Martin's estate."