In the lifetime of John Sprowl, namely, on the 2nd April, 1875, a mortgage was executed in favour of himself and Jane Sprowl, his wife, to secure payment of $1,000; the mortgage to be void on payment of $800 with interest at 15 per cent. per annum; $400 to become due and be paid within 12 months after the death of John Sprowl, and the balance of $400 within 12 months after the death of Jane Sprowl, if she should survive him; but, if she should die first, the balance of $400 to be paid within 3 years after the death of John, with interest in the meantime to be paid half-yearly, the first payment of $60 of interest to be made at the expiration of 6 months from the date of the mortgage and a like sum at the end of every 6 months thereafter, the one-half of the interest to be paid to John half-yearly and the other half to Jane; "said interest to cease at the death of the last survivor of said mortgagees."

The first instalment of $400 was not in question; the second $400 was the subject of the motion.

The learned Judge said that it was the duty of the executors of John to collect and get in the first $400 for his estate within the time mentioned in the will or any further time reasonably necessary; and the reasonable presumption was that the remaining $400 was payable after the death of Jane to her executors.

Evidence to shew a different intention on the part of John Sprowl was not admissible.

Everly v. Dunkley (1912), 27 O.L.R. 414, distinguished.

In the circumstances, the money in question must be regarded as the second $400 payable under the mortgage, and, in consequence of its terms, payable to the executors of Jane after her death. Effect must be given to the bequest to the church, and the $400 should be paid to the trustees thereof.

Costs of all parties of the motion should be paid out of the $400.