

the conclusion I would have arrived at in the first instance, I certainly cannot interfere with the finding of the learned referee, who saw and heard the parties.

Then with reference to the costs, which it is said were improperly charged. Before me it was admitted that the proper costs are properly chargeable, but it was said that the costs were charged without taxation. It does not appear that this contention was seriously urged, if urged at all, before the Master. I have looked at the bills, there is nothing in them to justify any interference, and I do not think that I should direct moderation where no beneficial result would follow.

In the result, the appeal substantially fails, and save as to the interest, must be dismissed with cost. I think, in view of this partial success, that \$20 should be deducted from the costs which would otherwise be taxable to the bank.

A motion for judgment was made upon the report. Judgment is granted with costs.

HON. MR. JUSTICE MIDDLETON.

OCTOBER 8TH, 1913.

RE AMES.

5 O. W. N. 95.

Will—Construction—Legacies Charged on Land—Devisee—Life Estate—Remainder to Children or Issue—Tenants in Common per Stirpes—Rule in Shelley's Case—Settled Estates Act—Gift over—Costs.

Motion by Margaret Ames, a beneficiary under the will of Myron B. Ames, deceased, for an order determining a question arising upon the administration of the estate as to the construction of the will. The will was that upon the death of the widow (which had occurred) Thomas should take during the term of his natural life without impeachment of waste and that Thomas should pay thereout several legacies.

MIDDLETON, J., *held*, that Thomas took only a life estate and that the legacies should be paid by mortgaging the estate under the Settled Estates Act.

J. Harley, K C, for the applicant, Margaret Ames.

W. S. Brewster, K.C., for Thomas Ames.

J. Grayson Smith, for Myron Ames.

J. R. Layton, for John Ames et al.

J. R. Meredith, for infants, and now appointed to represent any unborn children who may be concerned.