

G. H. Shaver, for the applicant.

A. F. Lobb, K.C., for the executors and for Robert Paterson (one of the executors) individually.

F. W. Harcourt, K.C., Official Guardian, for the infant daughter of the testator.

LENNOX, J.:—Mr. Lobb, in appearing for Robert Paterson, states that matters subsequently arising may affect the ultimate division of the property, so far at all events as the widow is concerned, and he waives no rights lying outside of the question of the proper construction of the will, as to this client.

The following clauses occur in the will in question:—

I give devise and bequeath to my said executors and trustees all my property upon trust: (1) to pay my just debts; (2) to determine the value of my interest in the business carried on at . . . Toronto by Paterson Brothers and allow the amount to remain in said business for five years, interest to be paid thereon at per cent. per annum, half-yearly: (3) to divide all my property in equal shares between my wife Bertha Davidson Paterson and my daughter Jessie P. Davidson.

The surviving partner, the said Robert Paterson, is one of the executors and trustees, and a testamentary guardian of the infant beneficiary. It is not contended, as I understand it, that anything has taken place since the death of the testator to affect the rights of the infant. Certain real estate which belonged to the partnership has appreciated in value since the valuation was made, at the death of the testator.

I am asked whether the widow and daughter, the legatees and devisees, are entitled to share in this rise in value. Subject to anything the widow, a person sui juris, may have done to debar herself, they certainly are. The testator did not mean by clause 2 that his trustees were to sell out to the surviving partner when they determined the value, and there was no obligation on the surviving partner to accept the valuation, or carry on the business, or pay interest. The testator merely meant that the surviving partner should have the right, if he desired it, to have the use of the testator's share of the assets for five years, at a rental, and this rental was to be measured by interest upon a valuation to be made. Practically speaking, there is no reason that this valuation should not be treated as final so far as the stock in trade, and perhaps the other chattel property, is concerned. As to the real estate, the infant