

SUTHERLAND, J.

NOVEMBER 3RD, 1910.

RE TODD.

*Will—Construction—Distribution of Estate—Vested Interests—
Mortgage—Discharge—Payment into Court.*

Application by Walter Todd the younger, under Con. Rule 938, for an order declaring the construction of the will of Walter Todd the elder, deceased, for the appointment of new trustees under the will to receive certain mortgage moneys, and for the distribution of the same, and a direction as to a discharge of the mortgage.

M. Grant, for the applicant.

W. Proudfoot, K.C., for certain beneficiaries.

SUTHERLAND, J.:—The testator died in or about the month of December, 1879, leaving him surviving his widow, Ellen Todd, and the following children, namely, Elizabeth Horn, John Todd, Martha Mastin, Ann McKnight, and the applicant, Walter Todd, and having duly made his last will and testament dated the 2nd December, 1879, wherein he appointed James Dundas, Walter Todd (the applicant), and John Todd, to be the executors thereof, of whom the only one now surviving is the applicant.

By the said will he directed that one year after his death a certain parcel of real estate should be sold and the proceeds equally divided among his children Elizabeth Horn, Walter Todd, John Todd, Martha Mastin, and Ann McKnight, and also that his money, mortgages, and all other property, real and personal, be also equally divided between his said children. He also willed and bequeathed unto his wife Ellen Todd an annuity of \$120 to be paid to her by her son Walter Todd, who was to have deposited "in his possession" a sum of \$1,800 to pay said annuity, and to give a mortgage on his property for the payment of said \$120, and to have deposited with him immediately after the testator's death money and other securities to the amount of the said \$1,800. After the death of the testator the said \$1,800 were deposited with the plaintiff, and he gave security for the due payment of the annuity, on certain real estate, to his brother John Todd and his mother, Ellen Todd, and this mortgage is still in force.

There is the further clause in the will which is the subject of investigation upon this motion: "And at the death of my wife,