41, 1938

In the Privy Council

No. /38.

ON APPEAL FROM THE COURT OF APPEAL
FOR ONTARIO

IN THE MATTER OF the Estate of Clifford Winfield Burrows Sifton, late of the Township of the Broken Front of Yonge, in the County of Leeds.

AND IN THE MATTER OF Consolidated Rules 600 and 604.

Record of Proceedings

LEE & PEMBERTONS, 44 Lincoln's Inn Fields, W.C.2,
Solicitors for Elizabeth Arminella Burrows Sifton, (Appellant).

CHAS. RUSSELL & CO., 37 Norfolk St., W.C.2,
Solicitors for the surviving Executors and Trustees of the Last Will and Testament of the said Clifford Winfield Burrows Sifton, deceased, (Respondents).

BLAKE & REDDEN, 17 Victoria Street, S.W.,
Solicitors for the Official Guardian, (Respondent).

JONES (LAWRENCE) & CO., Lloyds Building, Leaden Hall St., E.C.3
Solicitors for Mabel Cable Sifton, (Respondent).

TORONTO
LITHO PRINT LIMITED
1938

RECORD.

In the Privy Council

ON APPEAL FROM THE COURT OF APPEAL
FOR ONTARIO

IN THE MATTER OF the Estate of Clifford Winfield Burrows Sifton, late of the Township of the Broken Front of Yonge, in the County of Leeds.

AND IN THE MATTER OF Consolidated Rules 600 and 604.

Statement of Case

This is an Appeal by Elizabeth Arminella Burrows Sifton, a daughter of the said Clifford Winfield Burrows Sifton, deceased and a beneficiary under his Last Will and Testament from the Judgment of the Court of Appeal for Ontario, pronounced on the 17th day of June, 1937, varying the Judgment herein pronounced by the Honourable Mr. Justice Middleton on an application by way of an originating motion by Clifford Sifton and Wilfred Victor Sifton, the surviving Executors and Trustees of the Last Will and Testament of Clifford Winfield Burrows Sifton, deceased, (Respondents), for the opinion, advice and direction of the Court and for the determination of certain questions arising in the administration of the said Estate.

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PART II.

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In the Supreme Court of Ontario

IN THE MATTER OF the Estate of Clifford Winfield Burrows Sifton, late of the Township of the Broken Front of Yonge, in the County of Leeds.

AND IN THE MATTER OF Consolidated Rules 600 and 604.

I, ELIZABETH ARMINELLA BURROWS SIFTON, of the City of Montreal, in the Province of Quebec, make oath and say:

1. I am the daughter of the above-named Clifford Winfield Burrows 10 Sifton who died on or about the 13th day of June, 1928, Letters Probate of his Last Will and Testament having been duly granted out of the Surrogate Court of the United Counties of Leeds and Grenville on the 10th day of August 1928 as No. 8388, Liber 17, Folio 536 to my uncles, John Wright Sifton, formerly of the City of Winnipeg, in the Province of Manitoba, since deceased, Henry Arthur Sifton, late of the City of Toronto, in the County of York, since deceased, Clifford Sifton of the said City of Toronto, and Wilfred Victor Sifton, now of the City of Winnipeg, in the Province of Manitoba, the Executors therein named.

2. Under the provisions of the said Will, the said Executors are 20 authorized to pay to me a sum sufficient in their discretion to maintain me suitably until I am forty years of age and thereafter to pay to me annually the whole income of the said estate, the said payments to be made only so long as I shall continue to reside in Canada.

3. I am entirely dependent upon said payments from said Executors, having no other income.

4. Since the death of my father I have resided in Canada and since the month of June, 1936, I have resided at the City of Montreal, in the Province of Quebec, where I have maintained an apartment at 4326 Sherbrooke St. West which has been fully furnished by me and is under 30 lease until the 1st day of May, 1937, with option of renewal for two years thereafter.

5. I am desirous of going abroad for the next two or three years for the purpose of travelling and/or studying, with the intention of returning to Canada for a period of at least one month of each year, during all of which time I will continue to maintain my residence in the said City of Montreal.

RECORD

In the Supreme Court of Ontario

No. 1

Affidavit of Elizabeth A. B. Sifton February 6, 1937. —*continued.*

6. In the event that my going abroad for eleven months each year as mentioned in paragraph 5 above shall be found to constitute a failure to "continue to reside in Canada" within the meaning of the words "continue to reside in Canada" as used in said Will, in that case I am desirous of going abroad for the purpose of travelling and/or studying for such periods during each year as will not constitute a failure on my part to so "continue to reside in Canada" and will not prevent said Executors from paying to me sufficient to maintain me.

7. I am in doubt as to the meaning of the words "reside in Canada" as used in said Will and, in order to govern my movements in such a way as to exercise the privileges which I am entitled to exercise but not to disentitle said Executors to make said payments to me, it is necessary that I learn and I have consequently demanded from the said Executors answers to the following questions, namely:— 10

(a) In the event of my maintaining my residence in Canada but temporarily going abroad (out of Canada) for the purpose of travelling and/or studying for a period not exceeding eleven months and returning to Canada thereafter, would I during my temporary absence from Canada "continue to reside in Canada" within the meaning of the words "continue to reside in Canada" as used in said Will? 20

(b) If the answer to question (a) be in the affirmative, could I subsequently after a lapse of not less than one month again go abroad under similar circumstances and similarly "continue to reside in Canada"?

(c) In the event that my so temporarily going abroad for a period of eleven months should constitute a failure on my part to "continue to reside in Canada"

1. May I temporarily absent myself from Canada for any period and under any circumstances and still so "continue to reside in Canada" and if so for what periods and under what circumstances may I so absent myself? 30

(d) Is the purpose for which I absent myself from Canada material to the question of whether or not I "continue to reside in Canada"?

(e) If the answer to question (d) be in the affirmative

I. Is any temporary purpose sufficient?

II. If the answer to (e) I. be in the negative, what purposes would be sufficient?

III. If intention be material would my written statement of intention delivered to the Executors of said Estate sufficiently evidence said intention? 40

RECORD

In the Supreme Court of Ontario

No. 1

Affidavit of Elizabeth A. B. Sifton February 6, 1937.
—concluded.

(f) In the event that I shall cease to "continue to reside in Canada" within the meaning of the words "continue to reside in Canada" as used in the said Will, will the said Executors be disentitled thereafter forever from paying any income from the said Estate to me or will they be disentitled to pay any income from the said Estate to me only so long as I do not so "reside in Canada" but when I again take up my residence in Canada so that I again comply with the provision of so "residing in Canada" would the said Executors thereupon become entitled to pay to me a sufficient sum in their discretion to maintain me suitably until I am forty years of age and thereafter to pay to me the entire income from the said Estate?

10

SWORN before me at the City of Montreal in the Province of Quebec, this 6th day of February, A.D. 1937.

"ELIZABETH A. B. SIFTON"

"NICOLA L. CORBO,"
Notary

A Notary Public in and for the Province of Quebec.

20

NOTARY SEAL
Nicola L. Corbo.

RECORD

In the Supreme Court of Ontario

No. 2

Affidavit of Clifford Sifton February 10th, 1937.

IN THE MATTER OF the Estate of Clifford Winfield Burrows Sifton, late of the Township of the Broken Front of Yonge, in the County of Leeds.

AND IN THE MATTER OF Consolidated Rules 600 and 604.

I, CLIFFORD SIFTON, of the City of Toronto, in the County of York, Barrister-at-Law, make oath and say as follows:

1. That I am a brother of the late Clifford Winfield Burrows Sifton, who died on or about the 13th day of June, 1928, Letters Probate of whose Last Will and Testament were granted out of the Surrogate Court of the County of Leeds and Grenville on the 10th day of August, 1928. 10

2. That I am one of the Executors named in the said Last Will and Testament.

3. That I was throughout our entire lives intimately acquainted with the said Clifford Winfield Burrows Sifton and as such have knowledge of the facts herein deposed to.

4. That the said Clifford Winfield Burrows Sifton himself travelled abroad extensively from the year 1911 until about the year 1925, that during the years 1915 to 1925 he was domiciled in England.

5. That Clifford Winfield Burrows Sifton about 1913 married Mrs. Kerwin (nee Jean Donaldson), the mother of the said Elizabeth Arminella Burrows Sifton and divorced her in England about August, 1916, the custody of Elizabeth Arminella Burrows Sifton, then an infant of one year old, being awarded to her mother. 20

6. That the custody of the said Elizabeth Arminella Burrows Sifton was subsequently in 1921 voluntarily turned over to her father, the late Clifford Winfield Burrows Sifton and the said Elizabeth Arminella Burrows Sifton has resided either with her father, at boarding school or with her paternal relatives until becoming of age and establishing her independent domicile in the City of Montreal. 30

7. That the mother of the said Elizabeth Arminella Burrows Sifton subsequently remarried at least twice and is now Madame Du Bonnet and resides in Paris, France.

8. That the late Clifford Winfield Burrows Sifton returned with his said daughter to Canada about 1925, took up his residence at Assiniboine Lodge in the Township of the Broken Front of Yonge in the County of Leeds, where he continued to reside (except for temporary absences on business or pleasure trips) until his death.

9. That the said Clifford Winfield Burrows Sifton was a graduate from the University of Toronto in Political Science in the year 1911, that he graduated from Osgoode Hall Law School and was subsequently called to the Bar of Ontario.

SWORN BEFORE ME at the City of Toronto, in the County of York this 10th day of February, A.D. 1937.

10

D. P. MacDOUGALL
A Commissioner, &c.

CLIFFORD SIFTON

RECORD

In the Supreme Court of Ontario

No. 3

Originating Notice of Motion February 10th, 1937.

IN THE MATTER OF the Estate of Clifford Winfield Burrows Sifton, late of the Township of the Broken Front of Yonge, in the County of Leeds.

AND IN THE MATTER OF Consolidated Rules 600 and 604.

1. TAKE NOTICE that on Thursday the eleventh day of February, 1937, a motion will be made before the presiding Judge of this Court at Osgoode Hall, Toronto, on behalf of Clifford Sifton and Wilfred Victor Sifton, surviving Executors and Trustees of the Last Will and Testament of Clifford Winfield Burrows Sifton, late of the Township of the Broken Front of Yonge in the County of Leeds, deceased, at the hour of eleven o'clock in the forenoon or so soon thereafter as the application may be heard for the opinion, advice and direction of the Court and for the determination of the following questions arising in the administration of the said Estate: 10

(a) In the event of Elizabeth Arminella Burrows Sifton maintaining a residence in Canada but temporarily going abroad (out of Canada) for the purpose of travelling and/or studying for a period not exceeding eleven months and returning to Canada thereafter, would the said Elizabeth Arminella Burrows Sifton during her temporary absence from Canada "continue to reside in Canada" within the meaning of the words "continue to reside In Canada" as used in said Will? 20

(b) If the answer to question (a) be in the affirmative, could Elizabeth Arminella Burrows Sifton after a lapse of not less than one month again go abroad under similar circumstances and similarly "continue to reside in Canada"?

(c) In the event that Elizabeth Arminella Burrows Sifton so temporarily goes abroad for a period of eleven months should constitute a failure on her part to so "continue to reside in Canada" may Elizabeth Arminella Burrows Sifton absent herself from Canada for any period under any circumstances and still so "continue to reside in Canada" and if so, for what periods and under what circumstances may she so absent herself? 30

(d) Is the purpose for which Elizabeth Arminella Burrows Sifton absents herself from Canada material to the question of whether or not she so "continues to reside in Canada"?

(e) If the answer to question (d) be in the affirmative

I. Is any temporary purpose sufficient?

II. If the answer to (e) I. be in the negative, what purposes would be sufficient?

III. If intention be material, would the written statement of Elizabeth Arminella Burrows Sifton of her intention delivered to the Executors of said Estate sufficiently evidence said intention?

(f) In the event that Elizabeth Arminella Burrows Sifton shall cease to "continue to reside in Canada" within the meaning of the words "continue to reside in Canada" as used in the said Will, will the said Executors thereby be disentitled thereafter forever from paying any income from the said Estate to Elizabeth Arminella Burrows Sifton or will they be disentitled to pay any income from the said Estate to her only so long as she does not so "reside in Canada" but when she again takes up her residence in Canada so that she again complies with the provision of so "residing in Canada" would the said Executors thereupon become entitled to pay to her a sufficient sum in their discretion to maintain her suitably until she is forty years of age and thereafter to pay to her the entire income from the said Estate?

2. AND TAKE NOTICE that in support of the said application will be read the affidavits of Elizabeth Arminella Burrows Sifton and Clifford Sifton filed, Probate of the Last Will and Testament of the said Clifford Winfield Burrows Sifton and such further and other material as may be advised.

Dated at Toronto, this 10th day of February, 1937.

CLIFFORD SIFTON

IN THE MATTER OF the Estate of Clifford Winfield Burrows Sifton, late of the Township of the Broken Front of Yonge, in the County of Leeds.

RECORD

In the Supreme Court of Ontario

No. 4

Affidavit of Clifford Sifton February 11th, 1937.

AND IN THE MATTER OF Consolidated Rules 600 and 604.

I, CLIFFORD SIFTON, of the City of Toronto, in the County of York, Barrister-at-Law, make oath and say

THAT ELIZABETH ARMINELLA BURROWS SIFTON, being an undergraduate in Honour Modern Languages at the University of Toronto, which course provided an option to take the third year thereof 10 by extensive travel in foreign countries, proceeded abroad under the supervision of a suitable chaperon and spent the period between October 1934 and September 1935 inclusive in European countries travelling and studying for the purpose of completing her education, after which she returned to Canada.

SWORN before me at the City of Toronto, in the County of York, this 11th day of February, 1937.

D. P. McDOUGALL
A Commissioner, &c.

CLIFFORD SIFTON. 20

REASONS FOR JUDGMENT of the Honourable Mr. Justice Middleton delivered February 18, 1937.

RE CLIFFORD WINFIELD BURROWS SIFTON ESTATE.

CLIFFORD SIFTON, for the Executors.

GRANT GORDON, for the Testator's daughter.

An originating notice to determine certain questions arising with reference to the will of Clifford Winfield B. Sifton, who died on the 13th day of June, 1928. Letters probate have been duly granted.

10 By this will the testator appointed his brothers his executors and devised his entire estate to them, to manage the corpus of the estate in accordance with their best judgment, and to pay to or for his daughter Elizabeth A. B. Sifton a sum sufficient to maintain her suitably until she is forty years of age, after which the whole income of the estate shall be paid to her annually, "the payments to my said daughter shall be made only so long as she shall continue to reside in Canada". If the daughter dies leaving issue her child or children shall receive the whole estate, sharing equally. If the daughter dies leaving no issue, then the corpus of the estate shall be divided equally between the living grand-
20 children of the testator's father and mother.

The difficulties which have arisen centre around the words quoted.

Miss Sifton was an undergraduate in honours in modern languages at the University of Toronto. This course provided an option to take the third year thereof by extensive travel in foreign countries. Desiring to take this optional course, Miss Sifton proceeded abroad with a suitable chaperon and spent the period between October, 1934, and September, 1935, in European countries, travelling and studying for the purpose of completing her education, after which she returned to Canada. I understand that she did not on returning to Canada resume her University course,
30 but established a residence in the City of Montreal. She desires to travel extensively, and to study abroad and the question arises as to what rights she has to go abroad without bringing herself within the provision of the will disentitling her to receive the income from the estate. She is now twenty-two years of age.

The executors submit that according to the true construction of the will the testator, who was a barrister-at-law and familiar with legal terms, when he provided that payments to his daughter should only be made so long as she should continue to reside in Canada meant far more than if

he had provided that the payments were to be made so long as she should continue to maintain her domicile in Canada, and that it is essential to entitle her to the income that she should not only maintain her domicile in Canada, but should be permanently resident there. She is given the income so long as she continues "to reside in Canada" which means far more than maintaining a permanent residence there. The executors are willing to concede that the daughter may leave Canada from time to time temporarily for the purpose of travel and other purposes of business or enjoyment, so long as she is not absent from Canada for periods not exceeding in the aggregate two calendar months in any one year under ordinary circumstances; that circumstances surrounding any longer visits are material in determining whether she remains a bona fide resident of Canada but that in each case it must depend upon the facts and circumstances surrounding a temporary absence to ascertain whether the absence is really temporary, and that it is material in each case to have in mind the testator's intention that the absence must be relatively speaking for a short time, unless special circumstances should warrant a longer absence on a given occasion. In the opinion of the executors absence over any reasonable period of years should not greatly exceed two months per year. The executors ask that some general ruling may be given for their guidance so that there may be some certainty as to the circumstances in which it could be said that their niece did violate the condition "to continue to reside in Canada". Specifically they ask for an expression of opinion upon the fact concerning the absence during 1934 and 1935 for educational purposes.

For the daughter it is contended that the will only requires her to maintain a residence in Canada and that she is entitled to be absent from her residence for the purpose of studying, visiting and travelling, and that such absence does not disentitle her if she, in good faith, maintains a residence in Canada; that the condition is such that it should receive a liberal construction in favour of the daughter.

The daughter by her affidavit states: "I am desirous of going abroad for the next two or three years for the purpose of travelling and/or studying, with the intention of returning to Canada for a period of at least one month of each year during all of which time I will continue to maintain my residence in the City of Montreal". In the event of the absence for eleven months in each year constituting a failure to continue to reside in Canada, she asks that it may be determined for how long a period she may absent herself from Canada for the purpose of travelling and studying.

After very careful consideration I am of opinion that the testator contemplated a far more restricted meaning to this clause of his will than the daughter apparently thinks. I agree with her that a merely temporary absence from Canada for the purpose of education or travel will

RECORD

In the Supreme Court of Ontario

No. 5

Reasons for Judgment of Middleton, J.A. February 18th, 1937.

—*concluded.*

not bring about a forfeiture. The absence during 1934 and 1935 was for such a temporary purpose and, I think, worked no forfeiture, but it is impossible to say that an absence during each of the following years for eleven months in the year will not bring a forfeiture. That would, I think, work a forfeiture unless the executors are satisfied that any particular trip or extended period of residence abroad is in good faith for the purpose of completing her education. It is impossible for the Court to define with any accuracy what future conduct will fall within the terms of the will. I agree with the executors that merely temporary 10 absence will not work a forfeiture. The executors suggest a limit which should not be exceeded which appears to me to be a little too narrow. Two months would probably be adequate for a trip abroad, but I think the daughter should be allowed more than one trip in the year. I would venture to suggest that there should be a limit to any particular trip of two months, and a limit of a further month for minor trips in the course of the year. This, however, is by way of suggestion only for I think that while the Court might be compelled to determine the question, after the event and in the light of facts, the executors are in an infinitely better position to judge as to the future. The word "residence" is an elastic 20 word; it takes colour from the context in which it is used. Here it means an actual permanent residence, a home. It will not cease to be a residence by reason of mere temporary absence.

I have read all the cases referred to and many others without getting much assistance from any of them. Here, the case is widely different from cases in which an existing establishment is given on terms that it be maintained as a residence or that the testator's son shall reside there. I think the testator meant far more than that this unmarried daughter should merely maintain a residence within Canada. He meant that she should reside in Canada and that is the expression used. He gives her 30 complete latitude so far as Canada is concerned, but his desire is that she should make Canada her real home and the centre of her interests and this, I think, is quite incompatible with the idea that she may spend eleven months abroad, except as a very exceptional thing.

With reference to the question as to the right of resuming receipt of income after an absence which would indicate an intention to abandon residence in Canada, it seems plain that the testator did not contemplate an occasional residence during which the daughter should have the income and a period of non-residence during which she should not. His desire was that she should "continue to live in Canada". This question it is not ex- 40 pedient to answer till definite facts have arisen. The questions as propounded in the notice of motion do not admit of categorical answers. A general declaration may be granted as to the true construction of the will in accordance with this opinion, and leave may be reserved to apply from time to time as circumstances arise.

RECORD

In the Supreme Court of Ontario

No. 6

Judgment of Middleton, J.A. February 18th, 1937.

IN THE SUPREME COURT OF ONTARIO

The Honourable Mr. Justice Middleton — Thursday, the 18th day of February, A.D. 1937.

IN THE MATTER OF the Estate of Clifford Winfield Burrows Sifton, late of the Township of the Broken Front of Yonge, in the County of Leeds.

AND IN THE MATTER OF Consolidated Rules 600 and 604.

UPON motion made unto this Court on the 11th day of February, 1937, by Counsel on behalf of Clifford Sifton and Wilfred Victor Sifton, surviving Executors and Trustees of the Last Will and Testament of Clifford Winfield Burrows Sifton, late of the Township of the Broken Front of Yonge, in the County of Leeds, deceased, in the presence of Counsel for Elizabeth Arminella Burrows Sifton, the daughter of the said Clifford Winfield Burrows Sifton and a beneficiary under his Last Will and Testament, for the opinion, advice and direction of the Court by reason of certain questions submitted to the said Executors by the said Elizabeth Arminella Burrows Sifton, upon hearing read the Notice of Motion herein, the Affidavits of Clifford Sifton and Elizabeth Arminella Burrows Sifton and the Exhibits thereto and the said Last Will and Testament of the said Clifford Winfield Burrows Sifton, deceased, and upon hearing what was alleged by Counsel aforesaid, this Court was pleased to direct that this Motion stand over for Judgment, and Judgment having been delivered this day:—

1. THIS COURT DOTH DECLARE that the true intent, meaning and construction of the Clause "The payments to my said daughter shall be made only so long as she shall continue to reside in Canada" used in the said Last Will and Testament is—

(a) That the words "to reside in Canada" are equivalent to "spend substantially all of her time in Canada" but that mere temporary absences from Canada in certain circumstances would not bring about a forfeiture of the interest of the said daughter in the Estate.

(b) That any and all absences of the said daughter from Canada not exceeding two calendar months in the aggregate on one or more occasions during any one calendar year, or not exceeding two calendar months on one continuous occasion and one additional calendar month on one or more additional occasions in one calendar year, be in all events incapable of constituting a failure to continue to reside in Canada so as to bring about a

forfeiture of the right of the said daughter to receive payments or the benefits thereof for her maintenance under the said Will.

(c) That the absence of the said daughter from Canada abroad between October, 1934, and September, 1935, does not work a forfeiture of such interest.

(d) That an absence from Canada for a period of eleven months during the next two or three years will work a forfeiture of such interest unless the Executors of the Estate are satisfied it
10 is in good faith for the purpose of completing the education of the said daughter;

AND DOTH ORDER AND ADJUDGE the same accordingly.

2. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the questions propounded in the Notice of Motion do not now admit of categorical answers but the parties may apply to this Court from time to time, as circumstances arise, for the advice, opinion and direction of the Court on the matters in question.

3. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the costs of the parties represented on the Motion herein be paid out
20 of the Estate forthwith after taxation thereof, those of the said Executors and Trustees to be taxed as between Solicitor and Client.

JUDGMENT signed this 2nd day of April, 1937.

D'ARCY HINDS,
Registrar S.C.O.

Entered J.B. 68, Page 584-5
April 2, 1937
E.B.

RECORD

In the Supreme Court of Ontario

No. 7

Notice of Appeal of Elizabeth A. B. Sifton March 5th, 1937.

IN THE MATTER OF the Estate of Clifford Winfield Burrows Sifton, late of the Township of the Broken Front of Yonge, in the County of Leeds.

AND IN THE MATTER OF Consolidated Rules 600 and 604.

TAKE NOTICE that Elizabeth Arminella Burrows Sifton appeals to the Court of Appeal from the Judgment of the Honourable Mr. Justice Middleton delivered on the 18th day of February, 1937, on the application of Clifford Sifton and Wilfred Victor Sifton, surviving executors and trustees of the Last Will and Testament of Clifford Winfield Burrows Sifton, late of the Township of the Broken Front of Yonge, in the County of Leeds, deceased, for the opinion, advice and direction of the Court and for the determination of certain questions arising in the administration of the said estate on the following, among other grounds: 10

1. That the said Judgment does not properly interpret the said Last Will and Testament and is contrary to the intention of the said Testator and against the law.

2. That the learned Judge erred in holding that "It is impossible to say that an absence during each of the following years for eleven months in the year will not bring a forfeiture" when the Appellant proposes to do so only "for the next two or three years for the purpose of travelling and/or studying," while maintaining and returning each year to her residence in Canada. 20

3. The learned Judge erred in holding that such absence would work a forfeiture "unless the executors are satisfied that any particular trip or extended period of residence abroad is in good faith for the purpose of completing her education."

4. The learned Judge placed too strict an interpretation on the clause in question when he suggested that any particular trip abroad should be limited to two months' duration and limited to one month for minor trips in any one year. 30

5. The learned Judge should have answered question (f) and erred in suggesting that a period of non-residence would disentitle the Appellant to the income upon resuming her residence in Canada.

6. Upon such further and other grounds as Counsel may advise.

DATED at Toronto this 5th day of March, A.D. 1937.

WHITE, RUEL & BRISTOL,
51 King Street West, Toronto
Solicitors for the Appellant.

TO: Clifford Sifton, Esq.,
Solicitor for the Surviving Executors and Trustees of the Clifford Winfield Burrows Sifton Estate. 40

IN THE MATTER OF the Estate of Clifford Winfield Burrows Sifton, late of the Township of the Broken Front of Yonge, in the County of Leeds.

AND IN THE MATTER OF Consolidated Rules 600 and 604.

TAKE NOTICE that an application will be made to the Court of Appeal on the hearing of the Appeal by Elizabeth Arminella Burrows Sifton from the Judgment of the Honourable Mr. Justice Middleton dated the 18th day of February, 1937, for leave to submit as further grounds of appeal—

10 (a) That the Clause in question contained in the Last Will and Testament of Clifford Winfield Burrows Sifton, deceased, is void for uncertainty;

(b) That the learned Judge erred in holding that the words "to reside in Canada" are equivalent to "spend substantially all of her time in Canada", having regard to the express words of the Clause in question;

and for such Order as may be deemed necessary to amend the proceedings accordingly.

DATED at Toronto this 8th day of April, 1937.

20 WHITE, RUEL & BRISTOL,
51 King Street West, Toronto,
Solicitors for the Appellant,
Elizabeth Arminella Burrows Sifton.

TO: Clifford Sifton Esq.,
320 Bay Street, Toronto,
Silicitor for the Surviving Executors of the Estate of Clifford Winfield Burrows Sifton.

RECORD

In the Supreme Court of Ontario

No. 9

Order of Court of Appeal Adding Parties

IN THE SUPREME COURT OF ONTARIO

The Honourable, The Chief Justice of Ontario.
The Honourable, Mr. Justice Masten.
The Honourable, Mr. Justice Henderson.

Wednesday, the 21st day of April, 1937.

(SEAL)

IN THE MATTER OF the Estate of Clifford Winfield Burrows Sifton, late of the Township of the Broken Front of Yonge, in the County of Leeds. 10

AND IN THE MATTER OF Consolidated Rules 600 and 604.

THIS appeal having come on for hearing this day in the presence of Counsel for the Appellant and for the Executors, Clifford Sifton and Wilfred Victor Sifton, surviving Executors and Trustees of the last Will and Testament of Clifford Winfield Burrows Sifton, late of the Township of the Broken Front of Yonge, in the County of Leeds, Deceased, and it appearing to be expedient that all parties who may be interested in the said Estate should be represented:

1. IT IS ORDERED that the hearing of this Appeal be and the 20 same is hereby adjourned until Friday, the 23rd day of April, 1937, at the hour of eleven o'clock in the forenoon, or so soon thereafter as the same may be heard.

2. AND IT IS FURTHER ORDERED that the Official Guardian be and he is HEREBY APPOINTED to represent the Grandchildren of the late Sir Clifford Sifton by his wife, the late Lady Elizabeth Sifton, mentioned in the said Will, and also any unborn infants.

3. AND IT IS FURTHER ORDERED that Mrs. Winfield Sifton, Widow of the Testator, be notified that the Appeal herein will be heard as herein set forth, and that she may be interested in the questions to be 30 decided, that she may appoint Counsel to represent her at the said hearing, that whether or not she is represented by Counsel the matters herein will be disposed of and her interest, if any, therein, will be bound accordingly.

4. AND IT IS FURTHER ORDERED that a service of a copy of this Order upon the said Mrs. Winfield Sifton at the City of Montreal, in the Province of Quebec, out of the jurisdiction of this Honourable Court, shall be good and sufficient Notice of the aforesaid matters.

"D'ARCY HINDS"
Registrar, S.C.O.

Entered O.B. 161 page 440-1,
April 21, 1937.
"H.F."

RECORD

In the Supreme Court of Ontario

No. 10

Reasons for Judgment of Court of Appeal June 17th, 1937.

Rowell, C.J.O.

IN THE ESTATE OF CLIFFORD WINFIELD BURROWS SIFTON.

Copy of Reasons for Judgment of Court of Appeal (Rowell C.J.O., Latchford C.J.A., Fisher and Henderson J.J.A. and Kingstone J.,) delivered June 17th, 1937.

PETER WHITE, K.C., for Elizabeth Arminella Sifton, Appellant.

CLIFFORD SIFTON, for the Executors, respondents. 10

McGREGOR YOUNG, K.C., for grandchildren and unborn issue.

H.N.E. CURRY, for the widow.

ARGUED APRIL 23rd, 1937

ROWELL C.J.O.: Elizabeth Arminella Sifton, daughter of the late Clifford Winfield Burrows Sifton, appeals from the judgment of the Honourable Mr. Justice Middleton of February 18th, 1937, upon an originating notice, for the advice and direction of the Court upon certain questions relating to the interpretation of the will of Clifford Winfield Burrows Sifton. 20

The questions submitted to the Court are fully set forth in the judgment of my brother Henderson, which I have had the privilege of reading, and it is not necessary to repeat them.

The questions asked involve the interpretation of the residuary clause in the testator's will, which is as follows:

"I give, devise and bequeath all other property real and personal to my executors upon the following trusts, namely—

"To manage the corpus of the estate in accordance with their best judgment continuing any investments that exist at the time of my death if they see fit and to pay to or for my said daughter a sum sufficient in their 30 judgment to maintain her suitably until she is forty years of age, after which the whole income of the estate shall be paid to her annually.

"The payments to my said daughter shall be made only so long as she shall continue to reside in Canada.

"If my said daughter dies leaving issue her child or children shall receive the whole estate sharing equally on attainment respectively by each child of the age of twenty-five years.

"If my said daughter predecease me or dies leaving no issue then the corpus of my estate shall be divided equally between the then living grandchildren of my Father, Sir Clifford Sifton, by his wife, the late Lady Elizabeth Sifton, my lamented Mother."

The testator died on the 13th June, 1928, and his daughter, the present appellant, was at that time thirteen years of age. She was then residing with her father in Canada, and subsequent to his death she resided with her paternal relatives until she came of age, when she took an apartment in the City of Montreal, where she has since resided.

10 The first question the Court is called upon to consider on this appeal is whether the clause, "The payments to my said daughter shall be made only so long as she shall continue to reside in Canada" is void for uncertainty. This question was not raised on the original motion before the Honourable Mr. Justice Middleton, but the appellant applied for leave to argue it on this appeal, and, the executors consenting thereto, the Court granted leave. During the argument I was much impressed with the contention of the appellant that the clause was void for uncertainty, but upon further consideration of the terms of the will and the relevant authorities I have reached the conclusion that the clause is valid. I conceive it 20 to be the duty of the Court to give effect to the intention of the testator as expressed in his will, if that intention is not contrary to law.

It does not appear to me that there is anything uncertain or ambiguous about the words "to reside in Canada." The words "to reside" have a clear and definite meaning. They mean to live in a place. Nor is there anything indefinite about the duration of the term. The payments are to be made so long as the appellant shall continue to reside or live in Canada. The appellant was residing in Canada at the time of the testator's death, and the clause in question means that the payments are to be made to her only so long as she continues to reside in Canada.

30 In none of the cases relied on by counsel for the appellant, and referred to in the opinion of my brother Henderson, are the words as definite and precise as in this will. While it may not be easy to reconcile all expressions of opinion contained in the cases dealing with a condition of residence, except *In re Ross* (1904), 7 O.L.R. 493, I believe the actual decisions in such cases support the conclusion I have reached.

In Jarman on Wills, 7th Ed., p. 1518 the question of a condition requiring residence is discussed, and a number of authorities are cited. I shall refer to some of the more important ones.

In Fillingham v. Bromley (1823), 1 Turn. & R. 530, there was a pro- 40 vision in the Will that the devisee should live and reside on the estate called "Juts," and for default thereof all the devised estates were to go over to the person next in succession as if the person refusing or neglecting to

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Rowell, C.J.O. —continued.

reside or live at "Juts" were actually dead. The Lord Chancellor, Lord Eldon, held the condition void for uncertainty.

In Walcot v. Botfield (1854), Kay 534, a mansion-house and estates were devised to the testator's wife during life and after her death to others for life estates in succession as in the will more particularly set forth, subject to a proviso that the devisee for life should reside there for six months in every year, and if any devisee of the full age should for five years neglect to reside in the house for six months in every year, there was a gift over. The Vice-Chancellor, Sir W. Page Wood, held the proviso valid. At p. 542 he says: 10

"It was argued, first . . . the term 'residence' was entirely vague; [Fillingham v. Bromley (1823), 1 Turn. & R. 530]. . . . It was then argued, that if the meaning of the word 'residence' be so doubtful, fixing a period for such residence cannot alter the case. I think that this is the first fallacy of the argument. A great part of the difficulty in these cases has arisen from no time being limited for the residence required. Thus, in Fillingham v. Bromley, no period for residence was mentioned in the will, but the direction was simply, that the person entitled to and possessed of the hereditaments, which were devised in strict settlement, should not lease part of them called Juts, 'and that every 20 such person or persons should live and reside on the said estate called Juts; and for default thereof', all the property was given over; and Lord Eldon put a question, which shews the difficulty that occurs when no specific period for residence is pointed out. He asked, 'Suppose he had been a member of Parliament and had had a house in London, would you have said, that he did not live and reside at Juts?' . . . One sees plainly how the difficulty struck Lord Eldon from the form of his question. Generally, if a party has two or three establishments, every one of them may be called his residence, and not less so because he may not go there for some years. If he keeps up an establishment in it, the place is still his residence; and 30 thus he may be said to have his residence in two or three different counties."

In Dunne v. Dunne (1855), 3 Sm. & G. 22, there was a devise of lands to successive tenants for life, and then in strict settlement with a condition that "he or they" should reside in the mansion-house on the lands, and a declaration of forfeiture in case of non-residence. The first tenant for life, who was a married woman, was named as such in the will. It was held that on breach of the condition by her the estate for life was forfeited. The Vice-Chancellor, Sir John Stuart, said at p. 27:

"The intention of the testator is clear. He meant that whoever should 40 come into possession of the property should reside in the mansion-house. This was a rational stipulation. Looking to the whole of the will, I have no doubt that the testator intended the proviso to apply to every person who should become entitled in possession under the limitations of the will." The

judgment of the Vice-Chancellor was affirmed in appeal by the Lord Justices, 7 DeG. M. & G. 207, who held tha t the proviso as to residence applied to the married woman and was sufficiently distinct to create a forfeiture on her refusing to reside after she became a widow. In Wynne v. Fletcher (1857), 24 Beav. 430, it was held by the Master of the Rolls, Sir John Romilly, that a clause of forfeiture in the case of the devisee not making the mansion-house "his usual and common place of abode and residence" was not void for uncertainty.

In Re Wright, (1907) 1 Ch. 231, the testator gave his lease-hold house 10 to his trustees upon trust to permit his niece to hold and occupy the same free of rent, but subject to a proviso thereinafter mentioned, "and to her residing upon the said premises during her lifetime." It was held by Kekewich J. that "residing" meant "personally residing," and that on the facts of that case there was a forfeiture. At p. 235 he says:

"I have read with great interest the judgment of Wood V.C. in the case of Walcot v. Botfield (1854), Kay 534 and there are many passages in it which are worth attention with reference to this particular case, and especially one in which he says that residence must be personal, and is connected with the personal enjoyment by the person who is to reside."

20 In In re Boulter, (1922) 1 Ch. 75, the testator by his will made in 1915 having settled a share of his residuary estate upon a son, and the son's children, provided that the gift to the children was upon the express condition that they should during their respective minorities be maintained in England, and should not reside abroad except for periods not exceeding six weeks in each year. Upon non-compliance with such condition in the case of any such children, his or her share was to be forfeited, and accrue to the shares of the other children, with a gift over in the event of non-compliance in the case of all of them. It was contended that the gift was void for uncertainty. Sargant J. at p. 82, says:

30 "With regard to uncertainty I feel considerable difficulty. The gift is certainly not as uncertain as in the great case of Clavering v. Ellison (1856), 8 DeG. M. & G. 662, 7 H.L. Cas. 707. There, there was a difficulty in determining what was meant. But at the same time I think this will is not by any means a clear one. When the testator talks of the children being maintained in England, with regard to that I think there is no reasonable doubt. Then he says 'and do not reside abroad except for a period not exceeding six weeks in each year.' What does that mean? Is 'abroad' contrasted with England or has the word 'abroad' the ordinary meaning in the English language. Mr. Hart says that 'abroad' means anywhere 40 out of England. So that if the children went for eight or ten weeks to Scotland there would be a forfeiture. I do not think that contention can be sound."

He, however, intimated that there was some doubt as to the meaning of the word "abroad", and said that had he been called upon to decide the case on this question he would have required time to consider it, but he held the gift void on other grounds. It is clear, however, that in the opinion of Sargant J. "to be maintained in England" was sufficiently definite, and if that had been the only condition he would have had no hesitation in holding that the gift was not void for uncertainty.

In In re Wilkinson, (1926) Ch. 842, the testatrix gave her dwelling-house to her niece, and she also bequeathed to her trustees the sum of £7,000 upon trust for investment, and to pay the income to her said niece 10 "(in order to enable her to reside in the dwelling-house . . .) for and during the term of her natural life, or until she shall voluntarily cease to make the said dwelling-house her permanent home without power of anticipation and after her death. . . . Provided however that in the event of my said niece voluntarily ceasing to make the said dwelling-house her permanent home as aforesaid, I direct that the said sum of £7,000 and the investments representing the same shall fall into residue."

Tomlin J. says at p. 849:

"I confess I do not feel any difficulty in giving a rational meaning to the words 'to make the dwelling-house her permanent home'; I think it is 20 reasonably plain what that means; it seems to me it means, to keep it up as what may be colloquially called her headquarters. I do not think there is any particular difficulty in attaching a reasonable meaning to the phrase. I do not propose, and I do not think it necessary for me today to define precisely what I understand the phrase to mean. I am satisfied that it bears a sufficiently definite meaning to enable me to say that there is no case of uncertainty which renders the gift in any way bad, or defective. The fact that the language of the will is not uncertain has, of course, no necessary bearing upon the question whether when particular events have happened there may not be some difficulty in 30 saying whether or not they fall within that which is contemplated by the will; but that is not a matter with which I have anything to do."

There are two cases in our own courts in which the question of a condition requiring residence is discussed, to which reference should be made. The first, In re Ross (1904), 7 O.L.R. 493; the testator by his will devised a certain farm lot to his son John R. Ross provided he "comes to live and reside on the land devised during the term of his natural life" with gift over "provided the devisee does not come to reside on said land so devised to him within one year after my decease." It was held by Falconbridge C. J. that the condition as to residence was void 40 for uncertainty. Falconbridge C. J. follows Fillingham v. Bromley (1823), 1 Turn. & R. 530, and Clavering v. Ellison (1859), 7 H. L. Cas. 707. It does not appear that Walcot v. Botfield (1854), Kay 534, in which Fillingham v. Bromley is explained, or Dunne v. Dunne (1855), 3 Sm. &

G. 22, were cited. Had these cases been drawn to the attention of the learned Judge his decision might have been different. I find it difficult to reconcile the decision in *In re Ross, supra,* with the principles laid down in the cases above referred to, and if it cannot be distinguished on the facts—and I do not suggest that it can—I am of the opinion it should be over-ruled.

It should be pointed out that in Clavering v. Ellison the proviso was "provided that the devises hereinbefore contained to the children of my said son are made upon this express condition, that they be educated in 10 England, and in the Protestant religion, according to the rites of the Church of England; and in case any one or more of such children shall be educated abroad, or not in the Protestant religion, according to the rites of the Church of England, then I do hereby revoke" etc., and there was a gift over. This case is clearly distinguishable on the facts from the case at bar.

The other case is Re Switzer (1931), 40 O.W.N. 461, where the testator by his will gave to his father during his natural life all rents derived from his real estate and after his father's death the proceeds resulting therefrom to his nephew, Edward Roy Switzer, during his natural life, and if he had a son who survived him the real estate should fall to the 20 surviving son of Edward Roy Switzer absolutely; but Edward Roy Switzer was to enjoy the proceeds on the condition that he resided in the Province of Ontario. But in case he died without leaving male issue or "fails to comply with my request of living in . . . Ontario, then the rents resulting from my real estate shall be added from year to year to all money left by me in chartered banks or secured by first mortgage," and the proceeds to be divided as in the will provided. The testator died on February 20, 1902, and at that time Edward Roy Switzer was living in the United States. Shortly after, he came to reside in Ontario and continued to reside in Ontario until 1918. During that time he re- 30 ceived the rents of the lands. In 1918 he went to reside in California and has continued to reside there since. He had two sons, both residing with him in California. It was held by Garrow J. that Edward Roy Switzer took only a life estate; that the condition imposed as to residence in this Province "does not apply to or affect the interest of his eldest surviving son . . . Furthermore, there is a possibility of Edward Roy Switzer returning to Ontario to live, and it may well be that in that event his right to the rents (or interest) would revive although the learned Judge does not so decide." This reference is no doubt to the order of the Court made in 1917 authorizing the sale of lands. In his judgment Garrow J. refers to 40 *Fillingham v. Bromley, supra,* and while he does not expressly decide that the condition of residence in Ontario is valid as it was unnecessary for the decision of the case before him to do so, his reasoning would appear to indicate that he did not think the condition invalid.

The learned Judge held that the words "to reside in Canada" meant far more than maintaining a permanent residence there. With this I agree. They mean to continue to live in Canada.

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Reasons for Judgment of Court of Appeal June 17th, 1937.

Rowell, C.J.O. —*continued.*

Dealing with the specific questions asked, the relevant facts as set out in the affidavits are summarized in the judgment of the Honourable Mr. Justice Middleton as follows:

"Miss Sifton was an undergraduate in the honour course in modern languages at the University of Toronto. This course provided an option to take the third year, thereof, by extensive travel in foreign countries. Desiring to take this optional course, Miss Sifton proceeded abroad with a suitable chaperon and spent the period between October, 1934, and September, 1935, in European countries, travelling and studying for the purpose of completing her education, after which she returned to Canada. She did not on returning to Canada resume her University course, but, established a residence in the City of Montreal. She desires to travel extensively and to study abroad, and the question arises as to what rights she has to go abroad without bringing herself within the provision of the will disentitling her to receive the income from the estate. She is now twenty-two years of age."

10

I do not agree with the contention of counsel for the Executors that to reside in Canada means that the appellant cannot leave Canada either to pursue some particular study abroad or for a holiday abroad. One residing in Canada does not cease to reside or to live in Canada because he goes abroad occasionally for business or pleasure, nor does a student cease to reside or live in Canada because for a brief period he goes abroad to pursue some special course of study in completing his education. It is clear that the year the appellant spent abroad as part of her University course in modern languages was not a breach of the condition. A change of residence involves intention as well as action, although, of course, intention may be shown, and no doubt usually is shown by action.

20

An unmarried woman having no actual residence of her own in Canada and having no profession or occupation to which she is devoting her life in Canada may be said to be residing wherever she is living for the time being. If such a person left Canada, save for a limited period for a purely temporary purpose, a Court might conclude that she had ceased to reside in Canada. Whether or not she had ceased to reside in Canada would be a question of fact, which would have to be determined in view of all the circumstances.

30

In the case at bar a series of hypothetical questions are asked by the Executors which I do not think the Court should attempt to answer at the present time on the material now before the Court. I agree with the following statement of Tomlin J. in *In re Wilkinson* (1926), Ch. 842 above referred to at p. 849:

40

"The fact that the language of the will is not uncertain has, of course, no necessary bearing upon the question whether when particu-

lar events have happened there may not be some difficulty in saying whether or not they fall within that which is contemplated by the will."

The first question asked by the Executors is:

"(a) In the event of Elizabeth Arminella Burrows Sifton maintaining a residence in Canada but temporarily going abroad (out of Canada) for the purpose of travelling and/or studying for a period not exceeding eleven months and returning to Canada thereafter, would the said Elizabeth Arminella Burrows Sifton during her temporary absence from Canada 'continue to reside in Canada' within the meaning of the words
10 'continue to reside in Canada' as used in said will?"

The appellant has not completed her course at the University of Toronto and apparently does not intend to do so. No information is given as to the studies she desires to pursue. Are they to qualify her better for life in Canada, or does she just prefer to travel or live abroad, studying as she feels like it? If the latter, I am of the opinion it would be a breach of both the letter and spirit of the condition. The testator made clear his desire that his daughter should continue to live in Canada, and if she desires to be assured of the income from the estate it is necessary that she should comply with this condition.

20 I would modify the judgment below by substituting for paragraph 1 a declaration to the following effect:

"1. That the clause or condition, 'The payments to my said daughter shall be made only so long as she shall continue to reside in Canada,' is not void for uncertainty.

"2. That the true intent, meaning and construction of the clause or condition, 'The payments to my said daughter shall be made only so long as she shall continue to reside in Canada,' used in the said will and testament is that the words 'to reside in Canada' are equivalent to 'to live in Canada.'

30 "3. That leaving Canada for a limited period and for a purely temporary purpose with the intention of returning to Canada, and actually returning when the temporary purpose is accomplished, would not be a breach of the condition.

"4. That the absence of the said daughter from Canada, abroad, between October, 1934, and September, 1935, pursuing her studies as part of her University course, does not work a forfeiture of such interest."

All parties should have their costs of this appeal out of the estate, those of the Executors to be taxed as between solicitor and client.

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Latchford C.J.A.

LATCHFORD C.J.:—I have had the advantage of considering the opinion of His Lordship the Chief Justice of Ontario on this appeal, and, speaking generally, agree in his conclusions with a slight variation.

In the first place I would emphasize the view that there is nothing vague, equivocal, indefinite or uncertain about what the testator meant when he directed his executors "to pay to or for his daughter" (the appellant) " a sum sufficient in their judgment to maintain her suitably until she is forty years of age after which the whole income shall be paid to her annually." The amount of the income so to be paid to the testator's daughter is expressly limited to what in their judgment is "sufficient to maintain her suitably until she is forty years of age." The judgment of the executors applied to the determination of what is sufficient to maintain the lady having regard to her station in life fixes the amount or part of the income so payable. 10

That it is but a part and not the whole of the income which is so to be paid is made certain by the concluding words of the paragraph of the will relating to this period of forty years "after which the whole income of the estate shall be paid to her annually."

Then comes the clause of the will particularly objected to by the appellant. It follows immediately the bequests of income to Miss Sifton and runs as follows: 20

"The payments to my said daughter shall be made only so long as she shall continue to reside in Canada." The testator was a graduate in Political Science of the University of Toronto in 1911; he graduated also from the Osgoode Hall Law School and was enrolled as a barrister of this province. It can, I think, be safely assumed that when Mr. Sifton expressed himself in terms that are clear and, in the circumstances, charged with definite purpose, he intended that each of his words should bear its ordinary and proper meaning. After all the variations that are played upon words in dictionaries and in the opinions of judges and authors of text books, certain words of the testator as used in the paragraph in question are absolutely definite in their intendment. 30

The first of such words of importance is "only", here used adverbially beyond any doubt, and plainly the equivalent of "not otherwise than" or "except" and governing in such a qualifying relation the words "so long as she" (the recipient of the income) "shall continue to reside in Canada."

The appellant does reside in Canada, but desires to reside elsewhere and at the same time be paid by her father's executors such of the income of his estate as the executors in their judgment think sufficient to maintain her suitably while she resides anywhere she pleases outside Canada. Maintaining her present residence in Montreal or a residence elsewhere in Canada is not necessarily a compliance with the condition imposed 40

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Latchford C.J.A. —concluded.

by the testator unless Miss Sifton "shall continue to reside" in fact in the Montreal residence or some like abode within the broad limits of this Dominion. To pay this young lady the bequeathed income after the executors shall have become aware that she had ceased to reside in Canada would be to disregard the clearly manifested intention of the testator and to subject them to account by those entitled in remainder under later paragraphs of the will.

I do not think the Court can at present be properly called upon to decide how long or short is the period which Miss Sifton may absent herself from Canada without infringing on the restriction imposed imposing upon her residence in Canada. If that question should arise at any time, or from time to time, the executors must apply their judgment to it whatever the consequences. If their decision is wrong, it can be questioned in our courts; but until it is reached, this Court should not in my opinion, advise the executors what length of non-residence in Canada on the part of this young lady constitutes a breach of the condition on which only her right to any income from her father's estate is based.

The absence of the young girl from Canada before she was old enough to establish a residence here may, I think, be disregarded.

I agree in the disposition of costs made by my Lord.

Fisher J. A.

FISHER J.A.:—This appeal is by Elizabeth A. B. Sifton, from the order of Middleton J.A., on a motion by the executors for construction and advice in the administration of the estate of the deceased.

The testator Clifford W. B. Sifton being a member of the bar, prepared his own will. He had one daughter, his only dependent. His will is dated July 12, 1926, and he died on June 13, 1928. The terms of the will and the questions propounded for the consideration of the Court are all carefully referred to by my brother Middleton in his reasons for judgment upon the originating motion, and by my Lord the Chief Justice of Ontario, and my brother Henderson in their reasons for judgment on this appeal and further reference is unnecessary.

During and at the close of the argument, I was firmly of the opinion that this clause was not void for uncertainty, and since, on further consideration, my opinion has not changed. It is a matter of construction, and I can see no reason why effect cannot be given to the testator's intention as expressed by the language of his will. The question is, what is uncertain in this bequest by a father to his daughter? All that the father asked his daughter to do and which he said she must do, was that she must not only *reside* in Canada but *continue* to reside there, and if she did, she was to be entitled to the income for the periods mentioned in the will, and if she did not, her income would cease and estate was to go elsewhere. The daughter, up to the present time, has given no intimation to the executors that she does not intend to comply with the conditions imposed by the

will. What the daughter and executors are desirous of knowing and to be advised is: Is the daughter entitled to absent herself from Canada at any time, and if she is, for what periods of time? And also, if she exceeds in absence the periods of time granted, would such absence or absences operate as a forfeiture?

The executors through their counsel Mr. Sifton intimated that they had no personal interest, and that their only anxiety is to proceed and carry out the trusts imposed upon them by the will and in accordance with any order the Court may make. I have no difficulty in determining the meaning of the words "reside" and "continue to reside in Canada" 10 when applied to all the facts and circumstances. What the word "reside" means, and what the testator meant it to mean, is that his daughter must live in Canada and make Canada her permanent place of abode. There is no restriction placed as to where in Canada she shall live. She may choose any part of it, and she may own a house and live in it, or she may rent a house or board wherever she wishes, or live and board in an apartment or a hotel. Any one of such places would, in my view, constitute her home and place of abode. Mr. White stated on the argument that the daughter wanted to qualify as a playwright and to qualify as such it would entail an absence outside of Canada—he mentioned either 20 England or New York—for eleven months for a period of three succeeding years. The testator was an educated and wealthy man and his daughter had attended but not completed her course in the University of Toronto, and surely he never intended these words to mean that she was not to be entitled to complete her education. The question is, Would absence in England or New York for these years for that particular purpose operate as a forfeiture? I am of opinion that it would not. Being a student in England or in New York, and in either of those places living in a school residence, or in a boarding house or a hotel, would not, in my opinion, mean that the daughter had gone there to reside and make either 30 of those places her place of abode. Her absence there would be for a definite and particular purpose, and for definite periods of time.

Mr. White went so far as to argue that the daughter could not go outside of Canada at any time, or for any length of time. To give effect to that contention it would mean that if the daughter was living in Windsor or in Niagara Falls and crossed over to the United States to do some shopping for an hour or two, that would operate as a forfeiture. These restrictive words have no such meaning as, in my opinion, the testator never intended them to mean that the daughter should not be allowed to make visits outside of Canada, for instance, if she desired to go to the 40 City of New York to hear the Metropolitan Opera, or to attend the theatres, or in the winter months to visit Florida, California, or other winter resorts for such periods of time as are usual and reasonable, provided that she thereafter always returned to and continued to reside in Canada. If this is the true meaning—and in my opinion it is—all absences from Can-

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ada made by the daughter *prior* to the launching of this motion, did not operate as a forfeiture. It is always a question of fact for the executors to determine before making payments of income from the corpus, to satisfy themselves that the daughter had, up to that time, resided, and continued to reside in Canada, and if any doubt should arise they are at liberty, and it would be their duty in order to escape personal liability, to apply to the Court for advice and directions.

On the construction only I have endeavoured to consider the whole will and to discover what the real intention of the testator was and to 10 give effect to it by a fair and liberal meaning to the language used therein, and not to be driven out of it by what was decided in other cases or decisions: *In re Morgan* (1893), 2 Ch. 222, *Augur v. Beaudry* (1920), A.C. 1010; and *re Vanorder* (1926), 31 O.W.N. 295.

My Lord, the Chief Justice of Ontario in his learned and elaborate reasons which I have had the privilege of reading, has made exhaustive reference to the cases having to do with the contention that the clause is void for uncertainty, and as I fully agree with his reasons and conclusions, there is no reason to repeat what has been so well considered. I would however, add, at the present time for the protection of the execu-20 tors and trustees, to the declarations made by my Lord in modifying the judgment of Middleton J.A., a paragraph that the daughter is entitled to go abroad either to England or to New York to qualify as a playwright for 11 months in each year for three successive years, and at the expiration of the eleven months in each year she shall return to and live in Canada.

Kingstone J.

KINGSTONE J.:—Appeal from the judgment of Middleton J.A. upon an originating notice for the advice and direction of the Court on certain questions.

I have had the privilege and advantage of reading the reasons for judgment of my Lord the Chief Justice and my brother Henderson. The 30 clause in the will which the Court has been asked to interpret, and the questions themselves, as well as the surrounding circumstances, are fully set forth and explained in these judgments and need not be repeated.

On the argument, I was of the opinion that the words "as long as she shall continue to reside in Canada" were so indefinite and uncertain as to be incapable of being properly and satisfactorily determined, and were, for that reason, following certain English cases, as well as the judgment of Falconbridge C.J., *In re Ross* (1904), 7 O.L.R. 493, void for uncertainty.

On further reflection, I think the words "to reside in Canada" must be 40 held to mean what they say: "to live in a place," namely, Canada, and as the payments are to be made so long as the appellant shall continue to reside or live in Canada there is nothing ambiguous about the duration of the term.

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Kingstone J. —*concluded.*

I agree with the view that it is the duty of the Court to give effect to the intention of the testator as expressed in the will if that intention on a reasonable interpretation of the words can be ascertained.

It may well be that when certain events happen there will be difficulty in saying whether or not they fall within the proviso in the will, but that is not a matter with which at the present time this Court is concerned or on which it should attempt to express itself.

With some hesitation, therefore, I concur that a rational meaning can be given to these words, and I subscribe to the conclusions reached and the declaration proposed by my Lord the Chief Justice as to the true intent, meaning and construction of the clause and words in question. 10

Henderson J.A.

HENDERSON J.A. (dissenting) :—An appeal from the judgment of Middleton J.A. of February 18, 1937, upon an originating notice for the advice and direction of the Court upon the following questions:

"(a) In the event of Elizabeth Arminella Burrows Sifton maintaining a residence in Canada but temporarily going abroad (out of Canada) for the purpose of travelling and/or studying for a period not exceeding eleven months and returning to Canada thereafter, would the said Elizabeth Arminella Burrows Sifton during her temporary absence from Canada 'continue to reside in Canada' within the meaning of the words 'continue to reside in Canada' as used in said Will? 20

"(b) If the answer to question (a) be in the affirmative, could Elizabeth Arminella Burrows Sifton after a lapse of not less than one month again go abroad under similar circumstances and similarly 'continue to reside in Canada'?

"(c) In the event that Elizabeth Arminella Burrows Sifton so temporarily goes abroad for a period of eleven months should constitute a failure on her part to so 'continue to reside in Canada' may Elizabeth Arminella Burrows Sifton absent herself from Canada for any period under any circumstances and still so 'continue to reside in Canada' and if so, for what period and under what circumstances may she so absent herself? 30

"(d) Is the purpose for which Elizabeth Arminella Burrows Sifton absents herself from Canada material to the question of whether or not she so 'continues to reside in Canada'?

"(e) If the answer to question (d) be in the affirmative

(I) Is any temporary purpose sufficient?

(II) If the answer to (e) (I) be in the negative, what purposes would be sufficient?

(III) If intention be material, would the written statement of Elizabeth Arminella Burrows Sifton of her intention delivered to the executors of said Estate sufficiently evidence said intention?

"(f) In the event that Elizabeth Arminella Burrows Sifton shall cease to 'continue to reside in Canada' within the meaning of the words 'continue to reside in Canada' as used in the said will, will the said Executors thereby be disentitled thereafter forever from paying any income from the said Estate to Elizabeth Arminella Burrows Sifton, or will they be disentitled to pay any income from the said Estate to her only so 10 long as she does not so 'reside in Canada' but when she again takes up her residence in Canada so that she again complied with the provision of so 'residing in Canada' would the said Executors thereupon become entitled to pay to her a sufficient sum in their discretion to maintain her suitably until she is forty years of age and thereafter to pay to her the entire income from the said Estate?"

The facts are set forth in the reasons for judgment of the Honourable Mr. Justice Middleton as follows:

"An originating notice to determine certain questions arising with reference to the will of Clifford Winfield B. Sifton, who died on the 13th 20 day of June, 1928. Letters probate have been duly granted.

"By this will the testator appointed his brothers his executors and devised his entire estate to them, to manage the corpus of the estate in accordance with their best judgment, and to pay to or for his daughter Elizabeth A. B. Sifton a sum sufficient to maintain her suitably until she is forty years of age, after which the whole income of the estate shall be paid to her annually, 'the payments to my said daughter shall be made only so long as she shall continue to reside in Canada.' If the daughter dies leaving issue her child or children shall receive the whole estate, sharing equally. If the daughter dies leaving no issue, then the corpus of 30 the estate shall be divided equally between the living grandchildren of the testator's father and mother."

By leave of my Lord the Chief Justice the appellant was permitted, after service of her notice of appeal, as further grounds of appeal, the following namely:

(a) That the clause in question contained in the last will and testament of Clifford Winfield Burrows Sifton, deceased, is void for uncertainty.

(b) That the learned Judge erred in holding that the words "to reside in Canada" are equivalent to "spend substantially all of her time 40 in Canada" having regard to the express words of the clause in question.

I am of the opinion that the authorities to which I shall later refer, establish the principle that upon the proper construction of this will, the condition imposed is a condition subsequent, that upon the death of the testator the appellant became vested with a life estate in the income of the estate limited only as to amount until she attains the age of forty, and after that to the whole income.

In my opinion the only discretion vested in the executors is as to the amount sufficient to maintain her suitably until she is forty years of age, and this discretion should be exercised, having regard to her station in life. 10

It will be noted that during this period the executors are not limited to the expenditure of income.

I am of opinion that the Executors have no discretion to determine what is meant by the condition or what events will or will not constitute a breach of the condition.

I am, further, of opinion that the condition is void for uncertainty. That this is so is clearly established by the authorities and perhaps no more cogent argument could be advanced than is found in the reasons of my brother Middleton, in which he says in part:

"It is impossible for the Court to determine with any accuracy 20 what future conduct will fall within the terms of the will." Again: "The questions as propounded in the notice of motion do not admit of categorical answers."

It should be clearly kept in mind that the contention that the condition is void for uncertainty was not raised before Mr. Justice Middleton, nor was it discussed or referred to in any way, and his effort to suggest a sort of *modus vivandi* demonstrates the uncertainty of the condition and an effort on the part of the Court to be of some assistance in contruing it.

We were referred to a number of authorities, some extracts from which I propose to incorporate in this opinion. 30

Fillingham v. Bromley (1823), 1 Turn. & R. 530. In this case there was a devise of several estates to A. for life with remainder to trustees to preserve contingent remainders, with remainder to first and other sons of A. in tail male, with divers remainders over, with power to the persons from time to time entitled to the estates devised to lease all such estates except an estate called "Juts", and with a direction that the persons who should be entitled to and possessed of the devised estates should not lease the estate called "Juts" or any part thereof and that every such person should *live and reside* on the said estate called "Juts" and for default thereof all the devised estates to go over to the person next in suc- 40 cession as if the person refusing or neglecting to reside or live at "Juts"

was actually dead. Held that it was too uncertain what the testator meant by the words "live and reside" for the Court to determine that there had been a forfeiture.

Clavering v. Ellison (1859), 7 H.L. Cas. 707: The testator gave his real and personal estate to trustees upon trust (among other things) to invest his personal estate and pay the interest to his son T.J.C. for life, then to all the children of his son and their heirs, and he gave all the residue amongst all the children to be paid as they should attain twenty-one years, with the following condition:

10 " 'Provided that the devises hereinbefore contained to the children of my said son are made upon this express condition, that they be educated in England and in the Protestant religion, according to the rites of the Church of England; and in case any one or more of such children shall be educated abroad, or not in the Protestant religion, according to the rites of the Church of England, then I do hereby revoke,' etc., and there was a gift over: Held that the children took equitable estates tail, subject to be divested upon certain contingencies; that the proviso constituted a condition subsequent, to defeat vested estates, and was therefore to be construed strictly."

20 A condition which is to defeat a vested estate must depend on an event ascertainable from the beginning.

Per Lord Cranworth at p. 725:

"I consider that, from the earliest times, one of the cardinal rules on the subject has been this: that where a vested estate is to be defeated by a condition on a contingency that is to happen afterwards, that condition must be such that the Court can see from the beginning, precisely and distinctly, upon the happening of what event it was that the preceding vested estate was to determine."

In re Ross (1904), 7 O.L.R. 493: The testator by his will devised 30 a certain farm lot to his son John R. Ross "provided my son, John R. Ross, comes to live and reside on the said farm lot during the term of his natural life, subject however to the payment of the bequests" etc. Held, per Falconbridge C.J., that the condition as to residence is void for uncertainty and that the requirement was a condition not of its acquisition but merely of its retention and therefore a condition subsequent.

In re Sandbrook (1912), 2 Ch. 471: Three-fourths of the testatrix's residuary estate were given upon trust to pay the income to her two grandchildren up to December 31, 1927, and then to divide the corpus between them. The will contained a declaration that if at any time on or 40 before December 31, 1927, either one or both of the grandchildren should "live with or be or continue under the custody, guardianship or

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No. 10

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Henderson J.A. —continued.

control of their father—or be in any way directly under his control, all benefits, profits and income provided to be given under this my will to both or either one of them, as the case may be, shall thereby cease and determine, and it shall be at all times and under all circumstances an absolute condition of either one or both of them receiving any income, benefit or legacy under this my will, that he or she or both of them shall separately and individually continue to live free from his direct influence and control—*Held* (1) that the clause was a condition in defeasance of an interest previously given; (2) that it was void as being contrary to public policy, and (3) that the condition was bad on the ground of uncertainty." 10

Per Parker J., at p. 477:

"I am also of opinion that the condition itself is bad for another reason. It appears to me to be bad on the gound of uncertainty, for, as has been laid down by the House of Lords in the case of *Clavering v. Ellison* (1859), 7 H.L. Cas. 707, conditions subsequent, in order to defeat vested estates, or cause a forfeiture, must be such that from the moment of their creation the Court can say with reasonable certainty in what events the forfeiture will occur."

In re Reich (1924), 40 T.L.R. p. 398: In this case certain life interests were given by a testator to two ladies with the proviso that these 20 life interests should be forfeited if the donees respectively "shall willingly adopt and carry on any profession or professional calling, whether for gain or otherwise," and there was a gift over of any interest forfeited. Held, per Tomlin J., that this condition was void for uncertainty since it would be very difficult to say what is meant by the word "willingly" and equally or more difficult to define what would come within the words "a profession or professional calling."

Re Tegg, [1936] All E.R. 878: A testator left his property to his trustees upon trust for conversion and to pay out of the income a weekly annuity to his daughter upon the following condition: 30 "I desire that my daughter and any children she may bear should at all times conform to and be members of the Established Church of England." Held that this condition was void for uncertainty since it was open to grave doubt whether any particular act or omission in the future would bring about a forfeiture.

Vol. 28 Halsbury, p. 585, par. 1157: "A condition, according to the construction of the will, is either a condition precedent, that is to say such that there is no gift intended at all unless and until the condition is fulfilled, or a condition subsequent, that is to say such that the condition is intended to put an end to the gift, or to prevent the gift from ever 40 taking effect."

And in the same volume, at pp. 797, 798, par. 1446: "If, however, on construction it is doubtful whether a condition is precedent or subsequent, the court prima facie takes it as subsequent; a condition is not construed as precedent unless clearly so intended, where a construction of the condition as subsequent is consistent with the whole will. Accordingly, in cases of doubt, the presumption is in favour of the early vesting of the gift at the testator's death or at the earliest moment after that date which is possible in the context, whether it is of real or personal estate; and it is presumed that the testator intended the gift to be vested, subject to 10 being divested, rather than to remain in suspense."

For these reasons I would allow the appeal and declare that the condition is void and that the appellant is entitled to the benefits provided by the will free from the condition.

Costs of all parties should be paid out of the estate.

RECORD

In the Supreme Court of Ontario

No. 11

Judgment of the Court of Appeal June 17th, 1937.

IN THE SUPREME COURT OF ONTARIO

Thursday, the 17th day of June, A.D. 1937.

The Honourable the Chief Justice of Ontario
The Honourable the Chief Justice in Appeal
The Honourable Mr. Justice Fisher
The Honourable Mr. Justice Henderson
The Honourable Mr. Justice Kingstone

SEAL

IN THE MATTER OF the Estate of Clifford Winfield Burrows Sifton, late of the Township of the Broken Front of Yonge. in the County of Leeds;

10

AND IN THE MATTER OF Consolidated Rules 600 and 604.

Upon motion made unto this Court on the 23rd day of April, 1937, by Counsel on behalf of Elizabeth Arminella Burrows Sifton by way of appeal from and to set aside the Judgment pronounced herein by the Honourable Mr. Justice Middleton on the 18th day of February, 1937, in presence of Counsel for Clifford Sifton and Wilfred Victor Sifton, the surviving Executors and Trustees of the Last Will and Testament of Clifford Winfield Burrows Sifton, deceased, and Florence Mable Cable Sifton, the Widow of the deceased, and the Official Guardian representing grandchildren of the late Sir Clifford Sifton and unborn issue of the above named testator, and the Appellant by special leave of this Court having been permitted to submit that the Clause in question contained in the said Last Will and Testament is void for uncertainty, upon hearing read the Notice of Motion herein, the Affidavits of Clifford Sifton and Elizabeth Arminella Burrows Sifton and the Exhibits thereto and the said Last Will and Testament of the said Clifford Winfield Burrows Sifton, deceased, and upon hearing what was alleged by Counsel aforesaid, this Court was pleased to direct that this motion stand over for Judgment and the same having come on this day for Judgment:—

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30

I. THIS COURT DOTH ORDER that the said Judgment be varied and as varied be as follows:—

"1. THIS COURT DOTH DECLARE—

(1) That the clause or condition 'The payments to my said daughter shall be made only so long as she shall continue to reside in Canada,' used in the said Last Will and Testament, is not void for uncertainty.

40

(2) That the true intent, meaning and contruction of the said clause or condition is that the words 'to reside in Canada' are equivalent to 'to live in Canada'.

(3) That leaving Canada for a limited period and for a purely temporary purpose with the intention of returning to Canada and actually returning when the temporary purpose is accomplished, would not be a breach of the condition.

(4) That the absence of the said daughter from Canada abroad between October, 1934, and September, 1935, pursuing her stud-
10 ies as part of her University Course, does not work a forfeiture of such interest.

AND DOTH ORDER AND ADJUDGE the same accordingly.

2. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the questions propounded in the Notice of Motion do not now admit of categorical answers but the parties may apply to this Court from time to time, as circumstances arise, for the advice, opinion and direction of the Court on the matters in question.

3. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the costs of the parties represented on the Motion herein be paid
20 out of the Estate forthwith after taxation thereof, those of the said Executors and Trustees to be taxed as between Solicitor and Client."

II. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the costs of all parties represented on this Appeal be paid out of the estate forthwith after taxation thereof, those of the said Executors and Trustees to be taxed as between Solicitor and Client.
Entered O.B. 166, page 14-15,
November 26, 1937. "E.B."

"D'Arcy Hinds"
Registrar, S.C.O.

RECORD

In the Supreme Court of Ontario

No. 12

Order Approving Security on Appeal to Privy Council.

IN THE SUPREME COURT OF ONTARIO

Monday, the 6th day of December, 1937.

THE HONOURABLE MR. JUSTICE HENDERSON

In Chambers

IN THE MATTER OF the Estate of Clifford Winfield Burrows Sifton, late of the Township of the Broken Front of Yonge, in the County of Leeds.

AND IN THE MATTER OF Consolidated Rules 600 and 604. 10

Upon application made the 6th day of December, 1937, by Counsel on behalf of Elizabeth Arminella Burrows Sifton, in the presence of Counsel for Florence Mabel Cable Sifton, the Widow of Clifford Winfield Burrows Sifton, deceased, and the Official Guardian representing grandchildren of the late Sir Clifford Sifton and unborn issue of the said Clifford Winfield Burrows Sifton deceased, no one appearing for the surviving executors and trustees of the Last Will and Testament of the said Clifford Winfield Burrows Sifton, deceased, although duly served with notice of this application as appears by the Affidavit of Service of William 20 J. Henwood filed, for an Order admitting the Appeal herein of Elizabeth Arminella Burrows Sifton from the Judgment of the Court of Appeal for Ontario, dated the 17th day of June, 1937, to His Majesty in His Privy Council, and approving the security for the costs of the said Appeal, and upon hearing read the affidavit of Rowan Grant Gordon filed and the exhibits referred to in the said Affidavit, and upon hearing Counsel as aforesaid and it appearing that Elizabeth Arminella Burrows Sifton has, under the provisions of The Privy Council Appeals Act, being Chapter 86 of the Revised Statutes of Ontario 1927, a right of appeal to His Majesty in His Privy Council:— 30

1. IT IS ORDERED that the sum of $2,000.00 paid into The Canadian Bank of Commerce by Elizabeth Arminella Burrows Sifton to the credit of the Accountant of this Honourable Court, as appears by the receipt of the said Bank dated the 25th day of November, 1937, be and the same is hereby approved as good and sufficient security that Elizabeth Arminella Burrows Sifton will effectually prosecute her Appeal to His Majesty in His Privy Council from the said Judgment of the Court of Appeal for Ontario and will pay such costs and damages as may be awarded in the event of the said Judgment being affirmed.

2. AND IT IS FURTHER ORDERED that the Appeal by Elizabeth Arminella Burrows Sifton herein to His Majesty in His Privy Council from the said Judgment of the Court of Appeal for Ontario be and the same is hereby admitted.

3. AND IT IS FURTHER ORDERED that the costs of this application shall be costs in the said Appeal.

Entered O.B. 165, Page 109
December 6, 1937

"W. T. HENDERSON"
J.A.

E.B.

RECORD

In the Supreme Court of Ontario

Exhibit No. 1

Probate of Will of C. W. B. Sifton August 10, 1928.

PART II.—Exhibits

COAT OF ARMS

CANADA PROVINCE OF ONTARIO

IN HIS MAJESTY'S SURROGATE COURT OF THE UNITED COUNTIES OF LEEDS AND GRENVILLE

BE IT KNOWN that on the Tenth day of August in the year of Our Lord one thousand nine hundred and twenty-eight the last Will and Testament of Clifford Winfield Burrows Sifton late of Assiniboine Lodge in the County of Leeds, Ontario, Solicitor, deceased who died on or about the Thirteenth day of June in the year of our Lord one thousand nine hundred and twenty-eight at Assiniboine Lodge in the County of Leeds and who at the time of his death had a fixed place of abode at Assiniboine Lodge in the said County of Leeds was proved and registered in the said Surrogate Court, a true copy of which said last Will and Testament is hereunto annexed AND THAT administration of All and singular the property of the said deceased and in any way concerning his Will was granted by the aforesaid Court to John W. Sifton of the City of Winnipeg, Province of Manitoba, Publisher, Henry A. Sifton, Financial Agent, Clifford Sifton (the younger) Barrister-at-Law, and W. Victor Sifton, Director, all of the Township of North York, County of York, Ontario, the Executors named in the said Will they having been first sworn well and faithfully to administer the same by paying the just debts of the deceased and the legacies contained in his Will so far as they are thereunto bound by law and by distributing the residue (if any) of the property according to law and to exhibit under oath a true and perfect Inventory of All and singular the said property and to render a just and full account of their executorship when thereunto lawfully required.

WITNESS His Honour John Kelly Dowsley Esquire Judge of the said Surrogate Court at the Town of Brockville in the United Counties of Leeds and Grenville the day and year first above written.

By the Court

(SEAL)
(SURROGATE COURT)
(LEEDS AND GRENVILLE)

A. E. BAKER,
Registrar.

This is the last Will and Testament of me—Clifford Winfield Burrows Sifton of Assiniboine Lodge in the County of Leeds, Province of Ontario, Esquire.

I direct that all my just debts and funeral expenses be paid.

I revoke all Wills or codicils at any time by me heretofore made.

Considering that my wife is adequately provided for otherwise I make no provision for her in this Will.

I give and bequeath my furniture and personal effects to my daughter Elizabeth Arminella Burrows Sifton.

10 I give, devise and bequeath all other property real and personal to my executors upon the following trusts namely—

To manage the corpus of the estate in accordance with their best judgment continuing any investments that exist at the time of my death if they see fit and to pay to or for my said daughter a sum sufficient in their judgment to maintain her suitably until she is forty years of age, after which the whole income of the estate shall be paid to her annually.

The payments to my said daughter shall be made only so long as she shall continue to reside in Canada.

If my said daughter dies leaving issue her child or children shall re-20 ceive the whole estate sharing equally on attainment respectively by each child of the age of twenty-five years.

If my said daughter predecease me or dies leaving no issue then the corpus of my estate shall be divided equally between the then living grandchildren of my Father Sir Clifford Sifton by his wife the Late Lady Elizabeth Sifton my lamented Mother.

I appoint such of my brothers as are alive at the time of my death to be the Executors of this my Will.

If there are not two of my brothers alive at the time of my death then the Toronto General Trusts Corporation shall be a co-executor with 30 my surviving Brother.

IN WITNESS WHEREOF I have hereunto set my hand this twelfth day of July, 1926.

SIGNED, PUBLISHED and DECLARED to be his last Will and Testament by the said CLIFFORD WINFIELD BURROWS SIFTON in the presence of us all present at the same time, who, at his request, in his presence and in the presence 40 of each other have hereunto subscribed our names as Witnesses.

(Sgd.) WINFIELD B. SIFTON.

(Sgd) W. G. MURRAY
(Sgd) DOUGLAS MURRAY
(Sgd) CHARLES L. LEAN.