

1928

IN RE COURT

*May 21. ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME
COURT OF ONTARIO

Land—Descent—Construction of statute—Public Lands Act, R.S.O., 1914, c. 28, s. 47—Locatee's interest to "descend to, and become vested in, his widow during her widowhood"—Nature of estate taken by widow.

APPEAL from the judgment of the Appellate Division of the Supreme Court of Ontario (1) dismissing the present appellant's appeal from the judgment of Meredith, C. J. C. P., dismissing his appeal from the decision of the Master of Titles at Toronto in refusing to approve of the Local Master of Titles at Sault Ste. Marie, Ontario, stating a case for the opinion of the Court and naming the parties to it, and, further, from the refusal by the said Local Master of Titles at Sault Ste. Marie of the appellant's application to have Susanna Norella Brownlee registered as owner, as executrix under the will of Emily Court, deceased, of the land registered as parcel 469, Algoma.

*PRESENT:—Anglin C.J.C. and Duff, Newcombe, Rinfret and Lamont JJ.

(1) (1927) 33 Ont. W.N. 79 (correction note, 33 Ont. W.N. 133).

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The land was located by Frederick Henry Court in 1877, under the *Free Grants and Homesteads Act*. In 1892 he obtained a patent from the Crown. He died, intestate, in 1920, being then the registered owner of the land. His widow, Emily Court, was duly appointed his administratrix, and in 1921 was registered as owner of the land as administratrix of his estate. She did not remarry and did not elect to claim dower in the land. She died in June, 1926, leaving a will, by which she devised all her real estate to James Hincks Court, the present appellant, and appointed Susanna Norella Brownlee her executrix, to whom probate issued accordingly.

The appellant based his claim upon the provisions of s. 47 of *The Public Lands Act*, R.S.O. 1914, c. 28 (now s. 48 of c. 35, R.S.O. 1927) which reads as follows:

On the death of the locatee, whether before or after the issue of the letters patent, all his then interest and right in the land shall descend to, and become vested in, his widow during her widowhood in lieu of dower, but the widow may elect to have her dower in the land in lieu of this provision.

The appellant contended that, under that section, the said Emily Court, the locatee's widow, took, on the locatee's death, a fee simple estate in the said land, determinable on her remarriage, and that, not having remarried, she died seized in fee of the land, and that the same passed to the appellant under her will, and that her executrix was entitled to be registered as owner in fee simple as executrix.

At the conclusion of the argument for the appellant, and without calling on counsel for the respondents, the Court orally delivered judgment dismissing the appeal with costs, holding that under said s. 47 the estate conferred on the widow is a life estate determinable on her remarriage.

Appeal dismissed with costs.

J. E. Irving for the appellant.

Sir William Hearst K.C. for the respondent Edith C. Matheson (a daughter of the said Frederick Henry Court and Emily Court).

A. W. Rogers for the respondent the Attorney-General for Ontario.