

IN THE MATTER OF THE ESTATE OF JAMES D. MORICE,  
DECEASED

1943  
\*Oct. 6.  
\*Oct. 18.

CAROLINE MORICE ..... APPELLANT;

AND

C. W. DAVIDSON, EXECUTOR OF THE SAID ESTATE, AND SAMUEL A. MOORE, ADMINISTRATOR OF THE ESTATE OF JESSIE M. GAUVREAU, DECEASED, REPRESENTING, BY DIRECTION OF THE COURT, ALL PERSONS INTERESTED IN THE SAID MORICE ESTATE EXCEPT THE APPELLANT..... } RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

*Devolution of estates—Administration of estates—Testator’s widow taking under the Dower Act, Man.—Her life estate in the homestead—Sale of the homestead by consent—Basis of division of proceeds—Reference to determine values of life estate and remainder—Widow’s share of the estate.*

APPLICATION on behalf of the appellant to have the minutes of judgment as settled by the Registrar varied, as set out in the reasons now reported.

The judgment of this Court (1) as pronounced on February 2, 1943, was as follows:

The judgment of the Court below should be amended by striking out the third answer to the questions submitted to the Court below and substituting therefor the following answer as the answer to the second question:

“The net proceeds of the sale of the homestead should be divided in proportion to the respective values of the life estate and of the remainder, the widow accordingly receiving out of the proceeds the share representing the value of the life estate.”

The costs of both parties should be paid out of the estate.

and the minutes of judgment were settled by the Registrar in accordance with the wording of that pronouncement.

The questions submitted to Mr. Justice Adamson and his answers thereto, as set out in the formal judgment in the Court of King’s Bench, affirmed by the Court of Appeal for Manitoba, appear in the reasons for judgment in this Court reported in [1943] S.C.R. 94, at pp. 96-97.

O. M. Biggar K.C. for the motion.

G. Henderson contra.

\*PRESENT:—Rinfret, Davis, Kerwin, Hudson and Taschereau JJ.

(1) Reasons reported in [1943] S.C.R. 94.

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 In re  
 MORICE  
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 MORICE  
 v.  
 DAVIDSON  
 ET AL.

THE COURT.—This is an application on behalf of the appellant to vary the minutes of judgment as settled by the Registrar in respect of two matters.

The first is that the judgment of Mr. Justice Adamson, referred to in the minutes, should be varied by directing the omission of the words “except two-thirds of the amount received from the sale of the homestead, before any other beneficiaries are paid”.

The second, by inserting a direction that in the event of the parties failing to agree as to the respective values of the life estate and the remainder, it be referred to the Master to determine such respective values, such a direction being the direction which the Courts below should have given in accordance with the provisions of Manitoba Rule 539 (1) in order to avoid the necessity for the commencement by the parties of fresh proceedings to determine their respective rights.

Counsel for respondent raises no objection to a reference and the minutes should be varied as applied for. This appears to be authorized by Rule 539 of the Manitoba Court of King’s Bench.

As to the other matter, the answer of Mr. Justice Adamson to the first question received little or no attention on the argument before us and the significance of the exception to the answer to the first question was overlooked in the reasons for judgment.

The Court decided that the sale of the homestead property was the sale of two separate estates, viz., the life estate of the appellant and the remainder of the fee which the executor held for the estate of the deceased, and that the proceeds should be divided on this basis.

As a consequence, the appellant’s share in the proceeds will come to her in full satisfaction of *her life estate* in the homestead. In addition to this, the appellant is entitled to one-third of the net value of the estate including the value of the homestead.

The share of the proceeds of the sale of the homestead retained by the executor forms part of the net estate, of which the appellant is entitled to one-third.

Under section 20 of *The Dower Act*, the widow is entitled to receive one-third as if the same were a debt of the testator at the time of his death, and thus in priority to other beneficiaries. This was provided for in the answer

of Mr. Justice Adamson to question 1. The exception was added to his answer because of the view which he took of the disposition of the proceeds of the sale of the homestead.

In view of the decision of this Court on the main question, the exception should be stricken out as applied for. There will be no costs of this application.

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*Application granted; minutes of judgment varied; without costs.*

The Court

Solicitors for the appellant: *Coyne & Coyne.*

Solicitor for the respondents: *N. J. D'Arcy.*

