

1920
 January 9.

IN THE MATTER OF

“THE CONSOLIDATED ORDERS RESPECTING
 TRADING WITH THE ENEMY, 1916”.

AND

IN THE MATTER OF THE PETITION OF
 THE RIGHT HONOURABLE ARTHUR L. SIFTON.

Secretary of State for Canada for a vesting
 order, thereunder.

Alien enemy—Will—Bequest—Consolidated Orders, 1916, (P. C. 1023) section 23 and 28—Vesting order—Minister of Finance—Custodian of alien estates.

H. domiciled in the Province of Quebec, by her will, executed in due form, bequeathed \$10,000 to F, “a German and an alien enemy domiciled and residing in Germany” at her decease, which occurred in England on the 10th January, 1919.

The Under-Secretary of State, having filed a petition setting out the above facts and further alleging that he was charged with the greater part of the administration of the Consolidated Orders respecting Trading with the Enemy, 1916, and acting in that capacity, was of opinion that it was expedient for the purpose of said Consolidated Orders that a vesting order in the terms hereinafter mentioned should be made by the Court, applied for an order vesting the said legacy in the custodian of alien estates.

Held, upon hearing read the said petition and affidavits verifying the facts above set out, and upon reading the said Consolidated Orders, 1916 (P. C. 1023), that an order should be made vesting the amount of said legacy in the Minister of Finance and Receiver General for Canada as the custodian of alien estates, under the said Consolidated Orders, and authorizing him, on receipt of said sum to give a complete and final release and discharge to the executors under the will.

2. No costs of the application were allowed.

PETITION by the Secretary of State asking for an order that a certain legacy left to an alien enemy should not be paid to him, but be vested in the Min-

ister of Finance and Receiver General of Canada as custodian, under the above mentioned Consolidated Orders.

1920
RE
CONSOLIDATED
ORDERS
AND
SIFTON.

The Petition in substance alleges that one Anna Rebecca Gale, in her lifetime of the City of Montreal, widow of the late Thomas Sterry Hunt in his lifetime of the same place, died in England on January 10th, 1919, leaving a last will and testament executed in Montreal, in notarial form, whereby, *inter alia*, she bequeathed the sum of \$10,000 to one Baron Gisbert von Friesen, of South Germany; that the executors are authorized to act beyond a year and a day; that the said legatee is still domiciled in Germany, is of German nationality and an alien enemy; and that he, the petitioner, desires in the public interest that the said legacy be not paid to the legatee, but be vested in and taken over under said Consolidated Orders, 1916 (P. C. 1023).

In support of this application was filed a certified copy of the will and the affidavit of Edward Archbald, an executor, verifying the facts contained in the petition and the affidavit of the Under-Secretary of State also verifying the facts and stating that, as such he is charged, under the direction of the Secretary of State of Canada with the greater part of the administration of the Consolidated Orders aforesaid, and that, in his opinion it is expedient for the purpose of said orders that the legacy should be vested in a custodian and that he should be empowered to give discharge to the executors of the estate upon payment to him.

The petitioner based his application on section 23 of the said Consolidated Orders (P.C. 1023), which

1920
 RE
 CONSOLIDATED
 ORDERS
 AND
 SIFTON.
 REASONS FOR
 JUDGMENT.

provides who is the custodian under said Orders and section 28 (1) which reads as follows:

“28 (1) Any Superior Court of Record within Canada or any Judge thereof may on the application of any department of the Government of Canada, by order vest in the Custodian any such real or personal property as aforesaid, if the Court or the Judge is satisfied that such vesting is expedient for the purpose of these orders and regulations, etc.”

The application was made to the Honourable Mr. Justice Audette, in Chambers, on the 9th day of January, 1920.

W. P. J. O'Meara, for petitioner.

Per Curiam. Upon hearing the said petition and affidavits verifying the facts above set out, and upon reading the said Consolidated Orders, 1916 (P.C. 1023), an order should be made vesting the amount of said legacy in the Minister of Finance and Receiver General of Canada as the custodian of alien estates, under the said Consolidated Orders, and authorizing him, on receipt of said sum to give a complete and final release and discharge to the executors under the will.

There should be no costs of the application.