

Ont. Pr. 6, followed. *Re Whitty*, 30 Ont. R. 300.

—Restraint on alienation—Validity—Attempt to alien—Forfeiture—Heirs-at-law.]—A testator devised land to his three sons, in equal shares, in fee simple, adding, "without power to them, or any of them, to charge or alien the same or any part thereof except by . . . will";—Held, following *re Winstanley*, 6 Ont. R. 315, a valid restraint on alienation. The three sons were the sole heirs at law of the testator. After becoming entitled to the possession of the land under the devise, they joined in a mortgage of it in fee to a stranger. One of the three then contracted to sell his share to the other two: Held, that each of the devisees, by making the mortgage, had forfeited his estate under the will, and each had become entitled as heir at law to an undivided third of the whole, and therefore the vendor could make a good title in fee simple to his undivided share to his brothers, the purchasers. *Re Bell*, 30 Ont. R. 318.

—Action for legacy—Parties.]—A legatee under a will cannot maintain an action against the executor for payment of his legacy without making the heirs of the deceased and other legatees parties. *Stewart v. Stewart*, 2 Que. P.R. 121.

—Devise à titre d'aliments—Seizure—Art. 599 C.C.P.]—See ALIMENT.

IV. POWER OF APPOINTMENT.

—Disposition by will—Execution of power—Invalidity of the bequest.]—A wife having a power of appointment under her husband's will in the words "my said wife shall have full power to dispose of by will or otherwise," by her will devised all her real and personal estate to executors "in trust to convert the same into cash" and pay legacies, and as to the rest and residue to convert into cash and "divide the proceeds among friends, relatives and labourers in the Lord's work according to the judgment of my executors";—Held, that the disposition made clearly indicated an intention to take the property dealt with out of the instrument containing the power for all purposes, and not only for the limited purpose of giving effect to the particular disposition expressed; but that the residuary bequest was void as too indefinite, and that the executors took the property in trust for the next of kin of the appointor and not beneficially. *Re Wilson*, 30 Ont. R. 553.

IV. POWER OF APPOINTMENT.

—Intention to exercise power—Direction to pay debts—C.S.N.B., c. 77, s. 22.]—A testatrix, having a general power of appointment under the will of her father over real and personal estate, by her will directed that her debts and funeral expenses should be paid out of her estate. After making certain bequests the testatrix proceeded as follows: "The real estate of which I am possessed,

and the personal estate to which I am entitled, came to me under the will of my late father, and it is my will that after the payments above provided for that the residue of my estate, such as came to me under my said father's will, and all other I may be entitled to, both real and personal and mixed, shall be divided between my three children." The testatrix had no estate of her own:—Held, that the will operated as an exercise of the power, the direction to pay the testatrix's debts out of her estate being but one circumstance to be considered in determining what her intention was. *Hutchinson v. Baird*, 1 N.B. Eq. 624.

See EXECUTORS AND ADMINISTRATORS.

WITNESS.

—Examination de bene esse—When permitted—B.C. Rule 749—Abridgment of time.]—The serious illness of a necessary witness is ground for granting an order for his examination *de bene esse*.—When justice so requires, the Court will make an order abridging the month's notice required by Rule 749 from the party desiring to proceed in the action in which there has been no proceeding for one year before the last proceeding. *Bank of Montreal v. Horne*, 6 B.C.R. 68.

—Alteration in promissory note—Expert witness.]

See BILLS OF EXCHANGE AND PROMISSORY NOTES, IV.

—Evidence—Admissibility—Death of witness before cross-examination.]—See EVIDENCE, I.

—Husband and wife—Séparation de biens—Art. 314 C.C.P.]

See HUSBAND AND WIFE, XII.

WORDS AND TERMS.

"Arrears of rent due."]—See *Lazier v. Henderson*, 29 Ont. R. 673, ante 45.

"Co-insurance."]—See *Eckhart v. Lancashire Insurance Co.*, 29 Ont. R. 695, ante 207.

"Conveniently."]—See *Hastings v. Summerfeldt*, 30 Ont. R. 577, ante 316.

"Costs of commitment."]—See *The Queen v. Doherty*, 32 N.S.R. 235, ante 67.

"Defendeur."]—See *Harvey v. Mowat*, 2 Que. P.R. 228, ante 115.

"Droits de Gage."]—See *Barker v. Central Vermont Ry. Co.*, 14 Que. S.C. 467, ante 440.

"Committed to jail for trial."]—See *The Queen v. Smith*, 31 N.S.R., 411, ante 132.

"Executors and administrators."]—See *Mercer v. Neff*, 29 Ont. R. 680, ante 179.