

capable of ascertainment and identification; the statutory form in the schedule to the Act, is not compulsory as to its directions for description of goods and their locality but is intended as a guide.

*Imperial Paper Mills v. Quebec Bank*, 6 D.L.R. 475, 26 O.L.R. 637, affirmed; *Tailby v. Official Receiver*, 13 A.C. 523 u. 533, applied.

*J. H. Moss, K.C.*, for appellants. *Sir Robert Finlay, K.C.*, *Geoffrey Lawrence*, and *David J. Symons, K.C.*, for respondents.

Lords Atkinson, Shaw, Moulton, Parker.] [13 D.L.R. 707.

KENNEDY v. KENNEDY.

1. *Wills—Restraints upon alienation—Perpetuities.*

A bequest is void, as tending to create a perpetuity, by which the residue of an estate was given to executors or trustees to be used by them in their discretion in maintaining and keeping up, until sold, the testator's residence, as a home for his son, his son's family and descendants, or for whomsoever it should by the son be given by will or otherwise, the trust not being to keep up the home for specific persons, but to keep up and maintain a dwelling-house as kept up and maintained before the testator's death, and ending only on a sale being made which might not take place within the perpetuity period.

*Kennedy v. Kennedy*, 11 D.L.R. 328, affirmed; *Clarke v. Clarke*, [1901] 2 Ch. 110; *Re Blew*, [1906] 1 Ch. 624; *Re De Sommersy*, [1912] 2 Ch. 622, at 630, specially referred to.

2. *Wills—Devise and legacy—"Discretion" of named trustees—Possible exercise by successors.*

While a testator may so express a "discretion" with respect to trust property as to make it exercisable by the named trustees only, yet, where the exercise of the discretion has not been clearly limited by the terms of the will, broader construction is to be given so as to authorize the exercise of the discretionary powers by the holders for the time being of the office of trustee.

*Kennedy v. Kennedy*, 11 D.L.R. 328, affirmed; *Re Smith, Eastick v. Smith*, [1904] 1 Ch. 139, applied.

3. *Judgment—Effect and conclusiveness—What matters concluded.*

The plaintiff is not estopped by judgments in former actions,