

The first question should be answered by saying that there was no intestacy as to the lands—they were devised to the wife as the beneficiary. The lands were to be held by her for her own use and for the bringing-up of the children. Were the testator dealing only with the income, there would be some interest in the children, but where the whole corpus is disposed of, the present trend of authority is, that the mother takes absolutely with no trust for the support of the children such as the Court can recognise or supervise. The law was once otherwise, but has now settled down into the method of construction which simplifies the law, as recommended by Lord St. Leonards (*Property*, 1849, p. 375). He says: "It is not an unwholesome rule that, if a testator really means his recommendation to be imperative, he should express his intention in a mandatory form."

The reasons against the Court undertaking to revise the discretion of the parent are referred to by Malins, V.-C., in *Bond v. Dickinson* (1875), 33 L.T.R. 221.

The rule applicable to this devise is clearly laid down by the Judges in *In re Hanbury*, [1904] 1 Ch. 415, though that was reversed by a majority of Law Lords in *Comiskey v. Bowring-Hanbury*, [1905] A.C. 84, because of the special expressions used by the testator, which prevailed against the other absolute construction. The same rule is recognised and applied in the Supreme Court of Canada: *McIsaac v. Beaton* (1905), 37 S.C.R. 143.

The second question should be answered by saying that the children have no interest in the land, but are dependent on the bounty and care of the mother as to their proper bringing-up.

Costs out of the estate.

BOYD, C., IN CHAMBERS.

DECEMBER 24TH, 1915.

*REX v. JOHNSON.

Criminal Law—Keeping Common Betting-house—Criminal Code, secs. 227, 228—Police Magistrate's Conviction—Evidence to Sustain—Betting-slips and Money Found on Premises—Forfeiture.

Motion to quash a conviction of the defendant, by the Police Magistrate for the City of Hamilton, for keeping a common gaming-house or common betting-house.