

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

Full Court.]

[March 5.]

HOLMES V. MURRAY.

Will—Devise—Republication of will by codicil—Mortmain—R. S. O. c. 216—38 Vict. c. 75 O.

Judgment herein, noted *supra* 418, reversed, and the devise to the charity held to be good.

Per BOYD, C.—Though by the statute now in force the will is to speak from the death of the testator, unless a contrary intention be expressed, that does not change the date when the will was made, which is the sole point under the statutes which validate these bequests to religious bodies. The codicils do not revoke, but confirm the charitable disposition of the testator shewn at the time he made the will, but the source of the bounty does not spring from the last codicil but from the original will.

PROUDFOOT, J.—There is no doubt that for some purposes the will is drawn down to the time of republication or confirmation, as for instance, under the old law, to let in after acquired property. But in cases affecting real estate it has been held that if the will be made before the Statute of Charitable Trusts, and confirmed afterwards, or made more than six months before the death of the testator and confirmed afterwards, that the devise is good; and these decisions govern the present, and the devise to the charity is good.

McKay, for the plaintiffs, the trustees.

MacLennan, Q.C., for the appellants.

Full Court.]

[March 5.]

HATTON V. BERTRAM.

Will—Construction—Passing of after acquired property.

Judgment, noted *ante* p. 92, affirmed with costs.

Per BOYD, C.—The word "now" in the devise of Walkerfield, which I now reside upon," should not be allowed to control the other parts of the will, and is not sufficient to oust the effect of the statute by virtue of which the will is to speak from the death. The after acquired property in connection with Walkerfield was intended to pass by the will to the trustees, and by the will they were to hold

"Walkerfield" for the use and benefit of the testator's daughter.

Moss, Q.C., for the plaintiffs.

Lash, Q.C., and *E. D. Hall*, for the adult defendants.

MacLennan, Q.C., for the infant defendants.

Ferguson, J.]

[March 10.]

RE MURRAY AND KERR.

Vendor and purchaser—Representation of rents in advertisement—Compensation—Heating—Taxes.

K. purchased certain property at auction which had been advertised. Among the representations made in the advertisement was one that it "at present rents for \$11.60." After the sale the purchaser applied for compensation on two grounds: (1) that the landlord was bound to heat the building for the tenants, and the cost of which was not included in the \$11.60; and (2) on the ground that the \$11.60 did not include the taxes.

Held, that he was entitled to compensation on both grounds, and a reference was ordered to ascertain the amounts.

E. T. English, for the vendor.

Hoyles, for the purchaser.

Ferguson, J.]

[March 16.]

RE HAGUE, TRADERS' BANK V. MURRAY.

Judgment against executor—Conclusiveness of—Notice of dishonour.

The Traders' Bank and Central Bank in September, 1886, obtained judgments against T. M., the executor of W. H., deceased, upon certain promissory notes endorsed by W. H., which fell due after his death and were dishonoured. In December, 1886, the Traders' Bank obtained an administration order for the administration of the estate of W. H., and in the course of proceedings in the Master's office the two banks brought in their judgments as proof of their claims against the estate.

Thereupon the other creditors, by the solicitor appointed to represent them, asked leave to go into evidence to show that when the said promissory notes fell due and were