

BOYD, C.

MARCH 25TH, 1912.

*ADAMS v. GOURLAY.

Will—Construction — Conditional Bequests — Revocation upon Non-fulfilment of Condition—Distribution, among other Legatees Named in Will—Legatee Named in Codicil—Status of, to Question Fulfilment of Condition—Evidence as to Fulfilment—Condition contra Bonos Mores—Substantial Performance of Condition—Cy-près Doctrine.

Action for construction of the will of George Baker and for an accounting by the defendant, the executor; and to recover from the defendants the Misses Baker the moneys and property of the estate transferred to them by the executor, and for administration.

G. G. McPherson, K.C., for the plaintiff.

F. H. Thompson, K.C., for the defendants.

BOYD, C.:—The testator gives the bulk of his property to his two nieces, who are, with the executor, defendants, upon this condition:—

“Upon their remaining with me as my housekeepers at all times (unless I consent to one or both of them going out) during the remainder of my life and during that time rendering me faithful service and giving me all necessary and proper attention and all proper care and nursing in case of illness or in case I should become feeble and should they fail in those respects or any of them I hereby absolutely revoke the said devise and bequests to them and direct that in lieu thereof my executors shall pay to my said niece Sarah Elizabeth Baker the sum of two hundred dollars only and I direct that their shares be distributed equally among the other legatees named in this my will.”

“And I hereby further declare notwithstanding anything hereinbefore contained that it is not my will or intention that it shall be compulsory for both of my said nieces to remain with me at all times but that it will be sufficient if one of them is with me when I am in my usual health and that both of them shall be present when I require the services of both and so notify them.”

The will was made in February, 1907; a codicil was added giving the legacy of \$100 to the plaintiff, under the name of Ellen Hamilton—she not being named or referred to in the will

*To be reported in the Ontario Law Reports.