

safe investment until their majority or marriage, when said amounts and their accumulated interest should be divided equally, and appointed her husband (the plaintiff) their guardian.

In an action brought by the guardian to have the proceeds of the policy handed over to him by the executors,

*Held*, that the insurance moneys being made payable to the daughters were by 53 Vict., c. 39, s. 4 (O.), severed from her estate at her death, and her testamentary directions could not affect the fund beyond what is permitted by that statute and R.S.O., c. 136.

*Held*, also, that during the minority of the daughters the trustees appointed by the will, as provided for by s. 11, R.S.O., c. 136, may, by s. 13, invest in manner authorized by the will; but while the insured can give directions as to the investment, there is no control over the discretion of the lawful custodian of the fund in case the income is needed for maintenance or education or the corpus for advancement.

*Held*, also, that the guardian was the custodian of the daughters, with the incident of determining to a large extent what should be expended in their bringing up, and that the executors had charge of the preservation and the utilization of the fund, and so the estate and the persons of the daughters were in different hands.

*Held*, also, that s. 12 of R.S.O., c. 136, does not justify an insurance company in paying the amount of a policy to a testamentary guardian, the guardian there named being one who has given security, and that the court should not transfer the moneys from the executors to the guardian, as the latter's right to handle any part of the fund was subject to the trusts specified in the will, the execution of which was vested in the executors.

*Moss*, Q.C., for plaintiffs.

*Thos. Wells* for defendants.

BOYD, C.]

[April 19.

KECH *v.* MOSES

*Life insurance—Effect of writing concerning policy—Gift—Declaration of trust—Will—Absence of witnesses.*

One M. insured his life and signed a document directed to the managers of the company in these words, "I give and bequeath to . . . the amount stated on the policy given on my life by the S. Life Insurance Company, to be

paid to none other unless at my request, dated later." After showing or reading the policy, which he retained, he handed it to the plaintiff, remarking, "There, that is as good as a will." In an action against the administrator, who had collected the money from the company after his death, it was

*Held*, that on account of its incompleteness the transaction was not a gift; that as the trust intended was not irrevocable, it was not a declaration of trust; that it was of a testamentary character, meant to be acted on only after the death of the donor; and that it could not take effect on account of the want of witnesses, and the action was dismissed.

*Idington*, Q.C., for plaintiff.

*Moscrip* for defendant.

BOYD, C.]

[April 27.

MUTTLEBURY *v.* TAYLOR ET AL.

*Mortgage—More than one held by same party—Right of party liable to pay one to demand assignment without paying the others.*

B., the owner of property, mortgaged it to the plaintiff and then sold to H., subject to the mortgage, and took a second mortgage as part of his purchase money and assigned it to plaintiff. H. then sold to W. W., to obtain an extension of time on the first mortgage, entered into a covenant with the plaintiff to pay it, and afterwards sold the property to C.

In a foreclosure action in which plaintiff asked for an order for the payment of the first mortgage by W. under his covenant, W. asserting his willingness to pay the amount due on it if the plaintiff would assign the mortgage to him, it was

*Held*, that the plaintiff was not bound to assign to W. unless he paid off both.

*F. E. Hodgins* for the plaintiff.

*D. Urquhart* for defendant Windeler.

ROBERTSON, J.]

[May 28.

COLVIN *v.* COLVIN ET AL.

*Will—Devise without mentioning what—Intention—Unintentional omission—Words read into will.*

A testator being possessed of personalty and realty bequeathed money legacies to a much greater amount than the personalty he owned, and then bequeathed to his "executors . . . in trust to dispose thereof to best advantage in