

Err. & App.]

IN RE GOODHUE, ETC.

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shall," &c. This would apparently be the literal substitution provided for by sec. 90, and if correct, this consequence would follow: the "Governor-General" being substituted for "the Queen," the Lieutenant-Governor would declare "that he assents to the Bill in the Governor-General's name, or that he withholds the Governor-General's assent, or that he reserves the Bill for the signification of the Governor-General's pleasure." I am not called upon to put a construction on these two clauses, nor shall I offer any opinion with regard to the proper construction as to the assent to Bills.

As to disallowance, the clauses as to the Lieutenant-Governor's duty seem clear, that he is required by the first convenient opportunity to transmit an authentic copy of each Act assented to by him to the Governor-General, and if the Governor-General in Council within one year after the receipt thereof by him thinks fit to disallow the Act—such disallowance (with a certificate of the Governor-General of the day on which the Act was received by him) being signified by the Lieutenant-Governor by speech or message to the House of Assembly or by proclamation, shall annul the Act from and after the day of such signification.

But whether the power of assent or disallowance be, under the British North America Act, as regards Acts of the Legislature of Ontario, absolutely vested in the Governor-General so that he exercises such authority as given to him by that Act—and as in regard to the Parliament of Canada acting in the name and behalf of the Queen herself as the Lords Commissioners do in the mother country when Her Majesty cannot attend in person—makes, as far as I can see, no difference in the authority of the statutes when finally assented to. The statutes of the Legislature of Ontario are binding on all the residents of that Province, if made in relation to the subjects enumerated in the 92nd section of the British North America Act, 1867.

Assuming this Act to be in force, there is a difference of opinion between us as to its effect. As I understand, some of my brothers place a much more limited construction upon it than I can agree in.

Their view is, as I understand, chiefly founded upon the eighth clause of the deed of 26th September, 1870, as set out in the schedule to the statute in question, which recites doubts whether the intended arrangement for the settlement and distribution of the estate could be carried into effect by the trustees *by reason of the coverture of several of the parties thereto* and from the insufficiency of the powers of the trustees under the will, and it is contended that the first section of the statute, by which that deed "is confirmed and declared to be valid," and the trustees authorized to carry into effect the several provisions thereof, has no greater effect than to remove the objection as to coverture, and to enlarge the powers of the trustees so as to carry into effect such matters as were doubtful for the cause suggested.

It will not be disputed, that this being a private Act, ought to receive a strict construction so far as the interests of all parties affected by it are concerned. The intention of the Legislature, to be collected from the general object

and from the language of the first section, which alone is in question, must decide our judgment; and the recitals of the Act may, and I think must be taken into consideration to aid in arriving at that intention.

Now the first thing recited in the statute is the petition praying for relief, which sets forth the testator's will containing the provision already set out, by which he provided for the conversion and collection of his estate, and after other provisions, devised and gave the same in trust for all his children who should be living at the decease of his wife, in equal shares, and the child or children of such as might then be dead, in equal shares, such grandchild or grandchildren to be entitled to the share his or her or their father or mother would have been entitled to if living. The petition further sets forth that the shares of the said children are considerable, and that it is desirable they should enter into possession and enjoyment of the same, and that this should not be postponed until the decease of the widow; that to secure to the children such immediate possession and enjoyment of their respective shares, the petitioners respectively executed a certain instrument dated 26th September, 1870—a copy of which is set forth in a schedule annexed to the Act—and they prayed that an Act might be passed to *confirm the indenture and the several provisions thereof, and to effectuate the same.*

The next recital is in these words, "*And whereas it is expedient to grant the prayer of the petitioners,*" and immediately following, the first clause, confirming "*the said indenture,*" declaring it valid, and authorizing and requiring the trustees to carry into effect the several provisions thereof.

Now what was the prayer of the petitioners?

The will, in very clear language, postpones the possession and enjoyment by the petitioners of this residuary estate until the death of the testator's widow. The petition states that it is desirable that the petitioners should enter into possession and enjoyment, and that this should not be postponed, and prays the confirmation of the deed of the 26th September, and the provisions thereof, and to effectuate it.

The deed, so far as the petitioners are seeking the aid of the Legislature for their individual benefit, provides for the division of the above-mentioned residue of the trust estate (exceeding, as is stated, \$300,000), by allotting the same into six separate shares, and as soon as these allotments are made, for their distribution in a mode provided for, and for the conveyance of a share to each party according to the distribution and allotments, and this deed the Act confirms and declares to be valid.

According to my view of the intention of the Legislature, derived from the recitals to the Act, and this short but comprehensive clause, they intended, and have enacted that the division among the testator's children should not be postponed as the will directs, but should be immediate, although on the face of the will a contingency is foreseen and provided for, which the Act, as I understand, advisedly defeats.

I have already stated the opinion, as I understand, held adverse to the construction I place on the Act.