

reside abroad, or shall desire to retire from, or refuse or become incapable to act in the trusts of this my will before the same shall be fully performed, then and in every such case it shall be lawful for my said wife during her life, and after her decease, for the continuing trustees or trustee for the time being of this my will, or if there shall be no continuing trustee or trustees, then for the retiring or refusing trustee or trustees, or the executors or the administrators of the last acting trustee, to appoint any other person or persons to be a trustee or trustees in the place of the trustee or trustees so dying, or going to reside abroad, or desiring to retire, or refusing or becoming incapable to act as aforesaid, with liberty upon any appointment to alter the number of trustees, but so that immediately after such appointment the number shall not be less than two, and upon every such appointment the trust premises shall be so transferred as to have become vested in the new trustee or trustees or solely as the case may be, and every new trustee, as well before as after the trust premises shall have become vested in him or her, shall have all the powers or authority of the trustees for whom he or she shall be substituted.

"I hereby nominate and appoint my dear wife Ann and my friend, Dr. William Harley Smith, to be the executrix and executor and trustees of this my will."

Ann Curran and Dr. Smith received letters of probate, July, 1896; by order of the High Court of Justice of June, 1897, Dr. Smith was discharged from his executorship and Alfred Curran and Walter Curran were appointed "co-executors and co-trustees of the said estate of said James Curran . . . in conjunction with . . . Ann Curran;" and all the estate was by the same order vested in "the said Ann Curran, Alfred Curran, and Walter Curran, as co-executors and co-trustees upon the trusts contained in the will of the said James Curran."

Walter Curran left the province for the United States in 1900, remained there for about four years, removed to British Columbia in 1904, and there remained until a few weeks ago when he returned to Toronto.

In July, 1908, Ann Curran died, and since that time Alfred Curran has been acting as sole trustee of the estate. Walter Curran now claims to be a trustee also.

This is the first question.

Alfred Curran has been managing the properties of which his brothers are entitled for life to the rent (except such part as they themselves occupy), and without reference to them or their wishes. They wish to have the management of these prop-