

learned Judge declined to follow that case, saying that the three conditions stated by counsel for the heir-at-law in that case (p. 257) still applied to a charitable use in this Province: (1) it must be for the public or some section of the public; (2) it must be one as to which the Court can decide on legal evidence that it will confer the benefit on the public which the donor believed it would confer; and (3) it must be enforceable by the Court. The trust in question here may be carried out by the celebration of a Mass in private, irrespective of the presence of any congregation, in which service reference to the testator or his descendants will depend wholly on the memory and mental attitude of the celebrant, who in a few years would find it impossible to know who the descendants were for whom he was to pray.

Therefore, the disposition of the residue does not constitute a charitable use.

In the other event, the only part of the residue applicable to the trust would have been the personalty.

It was unnecessary to deal with the question whether the church could take the legacy.

Order declaring that the disposition of the residue is ineffective as tending to create a perpetuity.

Cost of all parties, as between solicitor and client, out of the estate: see *In re Hall-Dare*, [1916] 1 Ch. 272.

RIDDELL, J.

JULY 7TH, 1916.

#### RE REEVES.

*Will—Construction—Conditional Bequest—Waiver by Government of Succession Duties—Refusal to Waive—Substituted Bequest—Contingency Provided for.*

Motion by the executors of the will of Arthur L. Reeves, deceased, for an order determining a question arising upon the terms of the will.

The testator, after providing for payment of debts and funeral and testamentary expenses, gave legacies to his relatives, and then gave all the residue of his estate in trust for the Aged Women's Home of the City of Hamilton, "on condition that the Government waive any succession dues they would be entitled to on the other bequests to my relatives. Should the Government refuse to waive said dues, the bequest to the Aged Women's Home