Province of Prince Edward Island.

COURT OF CHANCERY.

ROLLS COURT.]

GILLIS *v.* GILLIS.

Devise of land for masses for the dead 9 Geo. II., c. 36, Mortmain Act - Power of Court of Chancery to apply doctrine of cy-pres independently of 43 Eliz., c. 14.

Testator devised and bequeathed one-third of his real and personal property "to the parish priest for masses for the repose of his soul." After disposing of another third he directed that "the remaining one-third of my property be disposed of for charitable purposes by my executors in accordance with my intentions."

Held, that neither the statute of Mortmain (9 Geo. II., c. 36) nor 1 Edw. VI., c. 14 (against superstitious uses) are in force in Prince Edward Island, and the devise and bequest to the parish priest for masses was good.

That the devise for "charitable purposes by my executors in accordance with my intentions," being for the purpose of a charity, should not be allowed to lapse by reason of indefiniteness. The expression, "in accordance with my intentions," is a well known mode of expression by Roman Catholics, having a definite meaning applicable to religious purposes.

That the Court of Chancery has power to apply the doctrine of cy-pres by virtue of its inherent jurisdiction, independently of 43 Eliz., c. 14, which is not in force in this Province.

The dictum of Chief Justice Marshall that the Court of Chancery has no power to protect and enforce a charitable bequest, void for indefiniteness, independently of 43 Eliz., c. 14, not followed. His decision in *Trustees of Baptist Association* v. *Hart's Exors*, 4 Wheaton, is chiefly based on the assumption that in the old cases anterior to the statute the Court of Chancery acted not by virtue its inherent jurisdiction, but of the royal prerogative of the Sovereign as Parens Patriæ and vested in the Lord Chancellor by the royal sign manual. But the report of the Royal Commission upon the Public Records submitted to Parliament, subsequently to that decision, cite many cases where the Court of Chancery, previous to the stat. of Eliz., appointed trustees for indefinite charities. Story, J., in *Vidal* v. *Girard's Executors*, 2 How., 127, followed.

The MASTER of the Rolls concluded an elaborate and lengthy judgment as follows: "From a consideration of these cases and many more which I do not cite, I have arrived at the conclusion that there exists in the Court of Chancery a jurisdiction inherent to it, independent of any statutes giving it power so to deal with this case as to support and protect this charitable bequest. As the English Court of Chancery dealt with *Syderfen's Case*, 1 Ver. 224, and with *Moggridge's Case*, 7 Ves. 69, and with *White's Case* (1893), 2 Ch. 41, so shall I deal with this case and this will. I find the residuary bequest in item 8 of the will a good charitable bequest, but by reason of its indefiniteness