

TEETZEL, J.

NOVEMBER 5TH, 1903.

CHAMBERS.

RE INNIS.

Will—Construction — Charitable Gift — Condition— Gift over—Interest.

Motion by executors under the wills of Helen Innis, and James Innis for an order declaring the construction of the will of Helen Innis, particularly clause 5, which reads as follows: "I give and bequeath the residue of my estate, consisting of cash in the bank, mortgages, stocks, and shares in different companies, and whatever other securities there may be, with interest thereon, to my husband James Innis, less the sums already mentioned in my will. It is my desire that of this residue be set apart the sum of \$5,000 for the promotion of some religious, philanthropic, or charitable object, which shall bear his name. The condition of this bequest is that he set apart a like sum of his own money for a like object, and in the event of him not doing so, then he to have the use of the \$5,000 along with the rest of my estate, with the interest thereof, during his life, and at his death what remains of my estate to be equally divided between my sisters and brothers, Mrs. Jane Alexander, Mrs. Isabella Stephen, James Gerard, and James Innes McIntosh, the nephew of my husband, and in the event of their death to their lawful heirs." James Innes survived his wife about four years, but did not set apart a like sum of \$5,000 for the promotion of any religious, etc., object.

C. L. Dunbar, Guelph, for executors and legatee McIntosh.

E. D. Armour, K.C., for the other legatees under the will of Helen Innes.

R. L. McKinnon, Guelph, for legatees under the will of James Innis.

TEETZEL, J., held that James Innis was entitled only to the life enjoyment of the residuary estate, and upon his death the corpus belongs to the four legatees named; that all interest accumulated since the death of the testatrix not expended by James Innis belongs to his estate. Theobald on Wills, 5th ed., p. 430, Brocklebank v. Johnson, 20 Beav. 205. Briggs v. Penny, 3 DeG. & Sm. 525, Am. & Eng. Encyc. of Law, 1st ed., vol. 29, p. 369, referred to. Order accordingly. Costs of all parties out of the Helen Innis estate.