

whole of the income or corpus for R. Tate's benefit. Had this been so, I should have been prepared to hold that he took a vested interest in the whole fund."

I think the principle to be applied in dealing with this will is at one with that stated by the learned Chancellor in *Re Hamilton*, 27 O. L. R. at p. 447, and that the right of the beneficiary can only be defeated by "making the gift or legacy entirely dependent on the discretion of the trustee, or by means of a gift over to some other beneficiary." In this he follows *Re Johnston* (1894), 3 Ch. 204.

Where it has been held that the fund does not go to the beneficiary, it is because the destination of the fund is controlled in one or other of those ways. See *Re Nelson*, 12 O. W. R. 760; *Re Rispin*, 25 O. L. R. 633; 46 S. C. R. 649; *Re Hamilton*, 27 O. L. R. 445, 28 O. L. R. 534; *Re Collins*, (1912), 23 O. W. R. 225.

In no case that I have been able to find has the mere interposition of a trustee to hold and to expend the moneys been held to defeat the vesting of the gift where otherwise no controlling discretion is vested in him.

There should be a direction that the trustee should pay over the balance of the fund to Angela Crotty after payment of any moneys properly expended by her thereout, and of her commission, and the costs of this motion; the account to be taken by the Master at London.

Costs of all parties out of the fund; those of the trustee as between solicitor and client. This motion was properly made in Court.

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HON. MR. JUSTICE LATCHFORD.

OCTOBER 27TH, 1913.

### RE DONALD McDONALD ESTATE.

5 O. W. N. 188.

*Will—Construction—Gift to Executors in Trust—Life Estate—Remainder—Condition—Birth of Issue—Time of Vesting.*

LATCHFORD, J., *held*, that where certain lands were given to A for life and after A's death to B if she should have lawful issue, but if she should die without lawful heirs to C, and where at A's death, B was living having lawful issue, she became entitled in fee simple to such lands.

London Weekly Court.

Application by the executors of Donald McDonald, late of the township of Enniskillen in the county of Lambton,