such heirs were all the brothers and sisters of said person and not his eldest brother only. *Wolff* v. *Sparks*, 29 S.C.R. 585, affirming 25 Ont. App. 326.

—Executors and administrators—Power to mortgage—Payment of debts—Ont. Trustee Act—Devolution of Estates Act.]—The testatrix, after a direction to him to pay her debts, devised land to her executor and trustee, and his executors and administrators, upon trust to retain for his own use for life, and directed that after his decease his executors or administrators should sell the land and divide the proceeds among her children:—Held, that this was a devise of the farm out and out as to the legal estate—the words "and his executors and administrators" being equivalent to "heirs and assigns;" the executor had the right by virtue of s. 16 of the Trustee Act, R.S.O. c. 129, to mortgage the entire fee for debts; and the mortgagee in such a mortgage, made within eighteen months of the death, was exonerated from all inquiry by s. 19. *In re Bailey*, 12 Ch. D. at p. 268, and *In re Tanqueray-Willaume and Landau*, 20 Ch. D. at p. 476, followed. The Devolution of Estates Act, R.S.O. c. 127, does not apply to a case where the executor derives his title to the land from, and acts under, the will and the provisions of the Trustee Act. *Mercer* v. *Neff*, 29 Ont. R. 680.

Restraint on alienation—Repugnancy—Invalidity—Contingent executory interest—Remoteness—Perpetuities.]—In the early part of a will, lands were devised to the vendor, a son of the testator, in fee, and other lands were devised to other children, but in the latter part of the will there was this clause: "It is fully understood that my children have no power to make sale or mortgage any of the lands mentioned, but to go to their heirs and successors . . Should any of my children die childless leaving husband or wife, said husband or wife to have a third during the term of their natural life:"—Held, that the first part of this clause amounted to a total restriction upon alienation, and was repugnant to the nature of the estate given by the devise, and was therefore void; Held, that the words "die childless" in the last part of the clause should be taken to mean "die not having children or a child living at the time of such death," and this part of the clause created a contingent executory interest or estate of freehold, which from its legal nature, would upon the contingency happening in its favour, spring up into existence; Held, also, that although many children of the vendor were living, none of whom was born till many years after the testator's death, and all of whom must die before the executory interest could take effect, yet the gift was not too remote, and did not infringe upon the rule against perpetuities. *Re Thomas and Shannon*, 30 Ont. R. 49.

—Restraint on alienation—Invalidity.]—Devise of real estate to a son with a condition as follows: "But I direct that before my said son . . . shall sell, mortgage, trade or dispose of, or encumber the said property or any part thereof, or any farm produce or timber, that he shall first obtain the consent of my sister . . . ":—Held, that the restriction being against all kinds of alienation, and in that regard absolute and unlimited, as the required consent was a condition precedent to any kind of alienation and unlimited as to time, the restraint was void. *McRae* v. *McRae*, 30 Ont. R. 54.

— "Cousins"—Indefinite dispostion—Trust—Power of appointment—General power.]—The testator died a bachelor, leaving no relations nearer than first cousins. By his will he gave certain specific legacies, one of which was, by clause 7, "to each of my cousins" the sum of $1, and proceeded: "9. I desire that my executors . . . shall have full power to make such and any disposition of the residue . . . of my . . . estate as they, in their judgment, may deem best, and to make due enquiry into the financial and social standing of my relations in Ireland, and, after an investigation and a proper knowledge is obtained, to make such grants and disposition of a portion of my estate and property as they, in their judgment, consider best, to such relations. 10. I also give my said executors power and desire them to dispose of any balance of my estate . . . to the best of their judgment, where they may consider it will do the most good and deserving. 12. I also give my executors power to hold property in trust for any of my friends whom they may think proper." By clause 1 he appointed certain persons "executors and trustees" of his will:—Held, that the word "cousins" in clause 7 must be taken to mean first cousins only. That no trust was created in favour of the relations in Ireland; the power given by clauses 9 and 10 was a general power over the residue, without the creation of a trust; it was an absolute power of appointment, which the executors might exercise in favour of themselves or any other person or persons; and the heirs or next of kin could not successfully, as upon an intestacy, make any claim upon the residue, unless in case of default of appointment. That the expressions used in clauses 1 and 12 did not shew that the residue was held by the executors in trust or that there was any trust connected with the power given. *Higginson* v. *Kerr*, 30 Ont. R. 62.

—Gift—Mistake in name of donee—Validity—Declaration—Originating notice.]—A testator bequeathed a sum of money to his "sister Anastasia Cummings." He had only two sisters, Catharine Kelly, to whom he bequeathed a like sum, by her proper name, and Maria Cummins:—Held, that the gift took effect in favour of Maria Cummins. Held, also, that a declaration to that effect could properly be made upon an originating notice under Rule 938. *In re Sherlock*, 18