

WILL—LEGACY—CHARITY—FAILURE OF PARTICULAR OBJECT IN TESTATOR'S LIFE—TIME—LAPSE—CY-PRÉS.

In re Rymer; Rymer v. Stanfield, (1895) 1 Ch. 19; 12 R. Jan. 112, was an application by executors for the opinion of the court whether a certain legacy had lapsed. The legacy in question was of £5,000, and was bequeathed to "the rector for the time being of St. Thomas' Seminary for the education of priests, in the diocese of Westminster, for the purposes of such seminary." At the date of the will, St. Thomas' Seminary was carried on at Hammersmith, but shortly before the testator's death it ceased to exist, and the students who were being educated there were removed to another seminary at Birmingham. The question was whether, under the circumstances, the legacy lapsed, or whether it could be applied *cy-prés*. Chitty, J., determined that it was a gift to a particular institution, and that, under *Fisk v. Attorney-General*, L.R. 4 Eq. 521, that institution having ceased to exist during the testator's lifetime, the legacy lapsed and fell into the residue, and the doctrine of *cy-prés*, therefore, did not apply; and this decision was affirmed by the Court of Appeal (Lord Herschell, L.C., and Lindley and Smith, L.JJ.).

ESTOPPEL—JUDGMENT BY CONSENT—COMPANY—WINDING UP—PROOF OF DEBT.

In re South American Co., (1895) 1 Ch. 37, was a winding-up proceeding, in which a creditor sought to prove a debt due to him by the company under an agreement. Before the winding up, the creditor had recovered a judgment against the company by consent for an instalment due under the same agreement, and he contended that the company were estopped by this judgment from disputing the agreement, and that the liquidator was in no better position than the company. It appeared that, prior to the consent to judgment, the company had put in a defence to the action, whereby they denied the existence of the agreement, and the liquidator contended that, notwithstanding the judgment for the instalment, he was now entitled to contest the alleged agreement as to the residue of the claim thereunder. But the Court of Appeal (Lord Herschell, L.C., and Lindley and Smith, L.JJ.) affirmed the judgment of Williams, J., holding that the judgment by consent affirmed the existence of the agreement, and estopped the liquidator from now disputing its existence.