

church was inoperative, would share the residue with her co-executor and her brother John.

The motion was heard in the Weekly Court at Toronto.

A. E. Knox, for the executors.

H. S. White, for St. Basil's Church.

G. Keogh, for the next of kin.

HODGINS, J.A., in a written opinion, said that the time had not arrived for realising the residue, but no obligation was taken to the motion as being premature; and the question might be decided now without hurt to any one: *In re Staples*, [1916] 1 Ch. 322.

The objections to the disposition of the residue were that it was (1) superstitious; (2) offended against the rule as to perpetuity; (3) was not to a person or corporation properly described who could rightly take it.

In England, such a bequest was treated as superstitious, but that was founded upon a statute of Hen. VIII. and the statute 1 Edw. VI. ch. 14 and the interpretation thereof by the Courts. See *In re Michel's Trust* (1860), 28 Beav. 39, 43; Halsbury's *Laws of England*, vol. 4, p. 120; *West v. Shuttleworth* (1835), 2 My. & K. 684, 697.

But those Acts and the decisions upon them are not effective out of England: *Bourchier-Chilcott's Law of Mortmain*, p. 100; *Yeap Cheah Neo v. Ong Cheng Neo* (1875), L.R. 6 P.C. 381.

Such a bequest is not superstitious in this Province: *Elmsley v. Madden* (1871), 18 Gr. 386.

The gift of the residue, however, was one of a mixed fund of realty and personalty; it was to a church; only the income from it was to be expended in Masses, and that forever. It was said that this made it void unless it was a charitable use; and, if a charitable use, void as to all save personalty.

As to the rule against perpetuities, reference was made to *Cocks v. Manners* (1871), L.R. 12 Eq. 574; *In re Clarke*, [1901] 2 Ch. 110; *Carne v. Long* (1860), 2 De G.F. & J. 75.

In this case, the trust upon which the residue was to be held was one creating or tending to create a perpetuity. When the testator died in 1895, the Acts 55 Vict. ch. 20 (O.) and 43 Eliz. ch. 4 were in force in Ontario; under the latter Act, the words "charitable uses" have a technical meaning, and include religious purposes for the instruction and edification of the public.

In Ireland, a bequest for Masses in perpetuity was held to be charitable; *O'Hanlon v. Logue*, [1906] 1 I.R. 247. The