

1914, the testator conveyed other lands to the trust company upon the like trusts. The testator removed to Ontario, and lived for a time at Grimsby. Having gone from there to Tampa, Florida, he there made his will on the 25th December, 1914. The will was, in part, as follows:—

"I state my wish of the distribution of my property after the proper proceedings to Mrs. I. Marshall . . . \$300 . . . of moneys in the Bank of Commerce. . . . My three sisters to receive the balance equally divided between Jenny, Emily, and Bella in the Bank of Commerce and Union Bank. My personal property in the West to be sold the money put at interest and divided equally between my brother Alfred . . . and my five sisters for the term of 10 years after it commenced to bear interest with this exception 40 acres more or less south of C.N.R. on section 36. 19. 22. W.R. the proceeds of which together with . . . \$100 derived from the interest of my personal property a year to be paid to Mrs. George Cumming . . . \$300 a year to be paid to Miss Emily East out of said interest at the end of 10 years this interest to revert to the Regina Hospital for all time to be known as from Edward Carss. I appoint James Taylor . . . executor."

Differences having arisen between the testator and his wife, a separation agreement was executed by them on the 11th January, 1915, by which he agreed to pay her half of the income arising from the trust fund.

The testator died at Tampa on the 20th February, 1915. His wife died between the 11th January and the 20th February, 1915.

The learned Judge said that he had come to the conclusion, upon a consideration of the whole will, that where the testator therein referred to his "personal estate" he meant the estate owned by him, real as well as personal, apart from the 40 acres specifically excepted, and apart from the moneys in the bank specifically dealt with, but inclusive of the realty covered by the trust-deeds.

The learned Judge was also of opinion that the will was a valid exercise by the testator of the power of appointment referred to in the trust-deeds. It was not a failure to execute, but, at the worst, a defective execution of, the power: *White & Tudor, L.C. in Eq.*, 8th ed., vol. 2, p. 296; *Tollett v. Tollett* (1728), 2 P. Wms. 489; *Farwell on Powers*, 3rd ed., p. 380; *Bruce v. Bruce* (1871), L.R. 11 Eq. 371.

The provision in the trust-deeds for payment to Emily East of \$300 a year for life and the legacy to her in the will of \$300 a year for 10 years were to be regarded as cumulative: *Hawkins on Wills*, 2nd ed. (1912), p. 355, and cases there referred to.

Where two parts of a will are repugnant to each other, the