

LOGIE, J.

APRIL 23RD, 1920.

RE McDONAGH.

Will—Devise of Land to Widow for Life—Devise of Remainder to such "Person or Persons" as Wife should Appoint—Appointment by Will of Incorporated Synod of Church for Use and Occupation of Rector for Time being of Parish—"Person" Including Corporation—Interpretation Act, sec. 29 (x)—Religious and Charitable Gift not Affected by Rule against Perpetuities—Devise for Advancement of Religion—Mortmain and Charitable Uses Act, sec. 10—Power of Synod to Hold Lands—Devise to Individual—Vested Interest—Lapse—Absolute Gift—Attempted Forfeiture—Ineffectiveness—Remuneration of Executrix Provided for by Will—Renunciation of Co-executors—Increased Allowance—Death of Beneficiaries with Vested Estates in Remainder—Rights of Representatives.

Motion by the executors of the will of Mary Ann McDonagh, deceased, for an order determining certain questions as to the construction of her will and of the will of her deceased husband, John McDonagh.

The motion was heard in the Weekly Court, Toronto.

J. G. Schiller, for the Toronto General Trusts Corporation, the applicants.

A. C. Kingstone, for the Synod of the Diocese of Niagara.

J. J. Maclellan, for the residuary legatees and others in the same interest.

F. W. Harcourt, K. C., for two infants.

LOGIE, J., in a written judgment, said that John McDonagh predeceased his wife, and by his will devised to her for the term of her natural life the dwelling-house in which he resided at the time of his death, and from and after her death he devised the same to "such person or persons and for such estates or interests therein" as his said wife should "by deed or will appoint," and, in default of appointment, over.

Mary Ann's will contained this clause: "I give and bequeath my residence and grounds now occupied by me . . . to the Synod of the Diocese of Niagara for the sole and only use of and occupation by the Rector for the time being of St. John's Church, Thorold."

This "residence" was the "dwelling-house" of John, and by this clause in her will Mary Ann purported to exercise the power of appointment given her by her husband's will.