

which the Legislature of Ontario had authority, by the Ontario Summary Convictions Act, R.S.O. 1914, ch. 90, sec. 4.

The fact of the illegality of the charges was clear, and was not contested by counsel for the Crown; but he relied upon sec. 1124 of the Code, made applicable by the said sec. 4, which expressly provides that Part XV. and sec. 1124, amongst others, shall apply *mutatis mutandis* to every such case, as if the provisions were enacted in and formed part of the Ontario Summary Convictions Act. Section 1124 gives all the powers of amendment given by sec. 754; and sec. 754 is applicable to this case.

The imposition of charges was in excess of the magistrate's jurisdiction; but the learned Judge thought it quite clear that he had the right to deal with the question of costs upon this motion. In other respects the conviction was right; and he adopted the suggestion of counsel for the Crown, to amend the conviction by striking out the part which related to costs. In other respects, motion dismissed without costs.

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SUTHERLAND, J.

JUNE 16TH, 1916.

RE ROBERTSON.

*Will—Construction—Devise—Life Estate—Remainder.*

Application by the executors, on originating notice, for the determination of questions arising under the will of Isaac Robertson, deceased.

T. J. Agar, for the executors.

T. H. Peine, for Elbert Messecar.

F. W. Harcourt, K.C., for the infant.

SUTHERLAND, J., in a written opinion, said that the particular clause in question was as follows: "I give devise and bequeath unto my nephew Elbert Messecar during his natural life my farm" (describing it) "and after his death to his children share and share alike."

Chandler v. Gibson (1901), 2 O.L.R. 442, was authoritative on the question what estate was taken by Elbert and what by his children.

See also Young v. Denike (1901), 2 O.L.R. 723; Grant v. Fuller (1902), 33 S.C.R. 34, at p. 38; Purcell v. Tully (1906), 12 O.L.R. 5, 8; Stuart v. Taylor (1914), 33 O.L.R. 20, 46.