

HIGH COURT DIVISION.

MIDDLETON, J.

JANUARY 3RD, 1921.

*RE MCBURNEY.

Will—Construction—Devise of Share of Residue to Church—Effect of Amalgamation with another Church—Devise to Trustees in Trust for Grandson upon his Attaining a Specified Age—Residuary Devise—Absence of Gift over—Right to Rents Accumulating in Hands of Trustees during Period from Death of Testatrix to Attainment of Age by Beneficiary—Unconditional Vested Gift—Immediate Devise of Freehold to Trustees—Gift to Beneficiary with Immediate Beneficial Enjoyment Postponed.

Motion by the executors of the will of Ann Jane McBurney, deceased, for an order determining two questions arising upon the terms of the will.

The motion was heard in the Weekly Court, Toronto.

W. G. Thurston, K.C., for the executors.

R. B. Henderson, for Charles McBurney.

A. Courtney Kingstone, for a residuary legatee.

George Wilkie, for other residuary legatees.

R. B. Beaumont, for the next of kin.

MIDDLETON, J., in a written judgment, said that the testatrix died on the 7th February, 1915.

The first question related to the devise of a share of the residue to the Erskine Presbyterian Church. The effect of the amalgamation of this congregation with that of St. Paul's Church having been considered by Latchford, J. (*Re Murray* (1920), ante 238), an order should be made in accordance with his views.

The second question was more difficult. The testatrix devised certain lands to her trustees "in trust for my grandson Charles McBurney upon his attaining 25 years." There was a residuary devise, but no gift over if the grandson should not attain 25, and there was no express disposition of the income in the meantime. There were 5 other devises of lands to grandsons and granddaughters, each expressed to be in fee. Charles had now attained the age of 25, and there was no doubt that he was entitled to the lands, but his right to \$1,200 rents accumulated in the hands of the trustees was denied.

* This case and all others so marked to be reported in the Ontario Law Reports.