

Err. & App.]

IN RE GOODHUE, ETC.

[Err. & App.]

Mr. Becher, one of the trustees named in the will, refused to carry out the arrangements contemplated by this deed, and confirmed by the statute. The other trustee expressed his readiness.

Thereupon a petition was presented to the Court of Chancery, by the testator's six children, praying that the trustees might submit their accounts, that a referee might be appointed for making the allotment and distribution provided for by the indenture, that the trustees might be ordered to carry into effect such allotment and distribution, when made, and that all proper directions might be given, enquiries had, and accounts taken.

The Court made an order, granting the prayer of the petition, against which Mr. Becher appealed.

1. Because it was beyond the power of the Legislature to pass this Statute, and it ought not to have been acted upon by the Court.

2. Because it appeared that some of the parties, prejudicially affected by the Statute, were domiciled in Great Britain, and others in the United States of America, and never had their domicile in this Province.

3. Because a considerable portion of the testator's estate was not in this Province at the time of his death.

4. Because the order directs the appellant to commit a breach of trust, without affording him any protection.

A suit was also instituted in the Court of Chancery in the names of three infant grand-children of the testator, not living in the Province, and by Mr. Becher, against all the children of the testator, and against the several husbands of his daughters, and some of the testator's grand-children. The bill, among other things, set forth, that by the Royal Instructions, the Governor-General was directed to reserve for the Royal Assent, or to disallow, any bill of an extraordinary nature and importance, whereby the rights and property of Her Majesty's subjects, not residing in the Dominion of Canada, might be prejudiced: that the petition above stated had not been served on the infant plaintiffs, or infant defendants in this suit, nor was any notice given them. And it prayed for an injunction against any act or thing, by virtue of the order of this Court, on the aforesaid petition, or the statute, or the indenture or deed of distribution, and that the indenture of distribution, statute and order might be declared void, and that the trusts of the will might be carried into effect.

The testator's son, Charles F. Goodhue, demurred to so much of this bill as sought relief in respect of the orders of the Court, as no case is made for relief by the bill, and as the matters thereinbefore specified were adjudicated on the hearing of the petition.

Some of the other defendants also demurred to the amended bill, on the ground that it made no case for relief.

The Court allowed the first demurrer, giving leave to amend, and disallowed the second.

The plaintiffs appealed against the order allowing the demurrer, and the other demurring de-

fendants appealed against the disallowance of their demurrer.

C. S. Patterson and Barker for the appellant.

Crooks, Q. C., and S. H. Blake for the respondent.

CHIEF JUSTICE OF APPEAL (DRAPER). — The principal question arises on the first reason of appeal against the order made upon the petition, viz., that it was beyond the power of the Legislature to pass this statute. If the Act can be shown to be a dead letter, the order founded upon its validity falls lifeless and inoperative. It required an Act of the Legislature to alter a will after the death of a testator, which will was at the time of its execution made in strict accordance with the law of the land, and in exercise of his rights and power; for it is not questioned that he had sufficient discretion to make a will, and that he exercised his own free will. He was under no legal incapacity, and it stands admitted that before this Act was passed the will was operative, the estates and interests created and given, vested in the trustees and in the beneficiaries named; and the very deed by which the children of the testator agree to defeat, as far as in them lies, the accumulation directed by the testator, as well as certain contingent interests given by him to his grand-children, provides that it, the deed, shall be of none effect unless the Act desired is obtained from the Legislature.

The life estate of the widow in the mansion and premises in which the testator resided rests on the will alone; for though the Act confirms the indenture of 26th September, 1870, it confirms nothing else, and the indenture does not profess to deal with the devise to her. And further, I cannot refrain from remarking that to every owner of lands or goods in the Province of Quebec, who has a right to alienate the same in his lifetime—is given, by the Statute of 14 Geo. III., chapter 83, s. 10, the right to devise or bequeath the same at his or her death; and that such right was virtually, though not in words, re-enacted and confirmed by the first statute of Upper Canada, which made the law of England the rule for the decision of all matters of controversy relative to property and civil rights. This right the testator had, and he exercised it in a legal manner.

The conduct of the children, beneficiaries under this will, is not marked with that deference and respect for the wishes and intentions of their deceased father which he most probably anticipated and relied upon, and but for which reliance he might have made the disposition of his property in such form as to ensure effect being given to what he might express.

He was absolute owner of a large amount of property. By law he and he only could transfer it, either by his acts while he lived or by his will to take effect after his death, by which latter means he might either fulfil, or disappoint, or qualify the *spem successionis* which blood relationship or kindred might create.

Now, whether by his will or by intestacy (leaving the disposition, regulated by law, to take effect), on his death the rights which up to his death the owner of private property had, are transferred, and any one who prejudices such rights or interferes with their enjoyment is a