

will, have accepted the office of executor and trustee and have acted jointly with his brother: Halsbury's Laws of England, vol. 14, p. 212; but he did not accept the office nor (so far as appeared) do anything indicating any intention to accept it—he could not be regarded as having acted as an executor and trustee of his father's will.

But Charles was in error when he stated that he did not act as executor or trustee under his mother's will. He joined with his brother in applying for probate of that will and in accepting probate when granted; and thus, in the most formal manner, accepted the office of executor and trustee of and under her last will. It was nothing to the point that he allowed his co-executor and co-trustee to do alone all the work of administering the estate. Notwithstanding this, the obligations incidental to his position continued, modified, in the absence of neglect or default on his own part, by the protection and indemnity provided by sec. 35 of the Trustee Act, R.S.O. 1914 ch. 121. He was undoubtedly an executor and trustee under the will of his mother.

Neither the confirmation (so-called) of the earlier will by the later one, nor the adoption by the donee of the power of a scheme of distribution suggested by the testator William, operated to constitute Charles an executor or trustee under William's will.

Costs of both parties out of the estate of Margaret.

MASTEN, J.

MAY 10TH, 1917.

RE DARDIS.

Will—Construction—Gifts to Brothers and Sisters after Death of Widow—Alternative Gifts to Children of Deceased Brothers and Sisters and Heirs of those Dying Childless—Time of Vesting—Period of Distribution—Ascertainment of Persons Entitled to Share—Divestment of Vested Estates.

Further argument upon the questions raised as to the construction of the will of Thomas Dardis (see *Re Dardis* (1917), 11 O.W.N. 331) was heard in the Weekly Court at Toronto on the 24th April, 1917.

I. Hilliard, K.C., for the administrators with the will annexed.
 Arthur Flynn, for T. L. Dardis, Elizabeth Allen, and others.
 G. W. Mason, for Agnes Gormley and others.
 J. G. Harkness, for R. J. Dillon and others.
 R. F. Lyle, for the children of James Allen, a deceased nephew.
 F. W. Harcourt, K.C., for the infants.