

children or any husband of either of my children, daughters (C.M. and A.E.F.), have any claim or demand upon the said executrices, etc., but their respective shares shall be kept and the interests, rents and profits thereof shall be paid and allowed to them annually.

In an action by C.M. and A.E.F. to have the said shares paid over to them, untrammelled by any trust, they claiming that the absolute bequest could not be cut down by doubtful words or by implication, and that the restriction as to claims of husbands and creditors was repugnant and illegal:

Held, affirming the judgment of the court below (20 N.S. Rep. 71), that the clear intention of the testator was that the principal of the said devise should be retained by the executors and only the rents, etc., paid to the devisees during their lives.

Appeal dismissed with costs.

Henry, Ritchie and Weston, for appellants.

Graham, Tupper and Parker, for respondents.

Dec. 15, 1888.

ROBERTSON v. PUGH.

Marine insurance—Warranty as to date of sailing—Limitation of action—Proof of loss—Protest—Inaccurate statement in.

A policy on the hull of a vessel contained this clause:—"Warranted to sail not later than 3rd Dec., 1882." And that on the freight the following:—"Warranted to sail from Charlottetown not later than 3rd Dec., 1882." The vessel left the wharf at Charlottetown on Dec. 3rd, but meeting with bad weather she came to anchor some two or three miles from the wharf, but within the harbor of the port, and proceeded on her voyage on Dec. 4.

Held, affirming the judgment of the court below (20 N.S. Rep. 15), that there was a compliance with the warranty in the policy on the hull, but not with that in the policy on freight.

An action on a marine policy was prescribed to twelve months from claim for loss or damage being deposited at the office of the assurers. The vessel being lost, a protest was deposited at the office of the insurers, which stated the voyage to have commenced at a date later than that warranted by the

policy. Subsequently the master who had signed the protest deposited with the insurers a declaration stating that the vessel had sailed at a date within the policy, and that he had misstated the date in the protest through ignorance of the language of the country in which it was made. An action was brought on the policy within 12 months from the depositing of the amended statement, but more than 12 months from the service of the protest.

Held, also, affirming the judgment of the court below, that the protest was a claim for loss or damage within the meaning of the condition in the policy, and the action was too late.

Appeal dismissed with costs.

Henry, Ritchie, and Weston, for appellants.

Graham, Tupper, Borden and Parker, for respondents.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

DONOVAN v. HAGAN.

Assessment Act—R.S.O. 1877, ch. 180, secs. 155, 156, 114, 129, 130, 131—Tax sale, invalidity of—Limitation of time for impeaching—Payment of taxes—Resident and non-resident roll—Distress for payment of taxes.

The two years limited by section 156 R.S.O., ch. 180, for impeaching a tax sale, runs from the time of making the tax deed, not from that of the auction sale.

The word *sale* in that section can be properly understood only in the sense of conveyance.

Hutchison v. Callier, 27 C.P. 249, *Church v. Fruton* 28 C.P. 204, approved of. The contrary view expressed in *Smith v. Midland* 4 O.R. 498, *Lytle v. Broddy* 10 O.R. 530, *Claxton v. Shibley* 10 O.R. 295; and *Deverill v. Coe* 11 O.R. 222, dissented from.

Unoccupied land divided into lots was assessed for the year 1879 and entered in the non-resident division of the assessment roll, but instead of being assessed by the numbers and names of the lots alone, separately valued and without the name of the owner, it was