

"either in contract or in tort or otherwise, in all respects as if she were a feme sole;" and to the Trustee Act, R.S.O. 1914 ch. 121, sec. 41, eliminating the common law doctrine of *actio personalis moritur cum persona*.

There should be judgment for the plaintiff for \$3,000 with costs.

ROSE, J.

DECEMBER 31ST, 1918.

*MATHESON v. TOWN OF MITCHELL.

Will—Devise of Land to Municipal Corporation for Public Park—Acceptance on Conditions of Will—Condition as to Order and Repair—Breach—Action for Mandatory Order to Corporation to Keep in Order and Repair—Obligation to Superintend Performance not Accepted by Court—Forfeiture for Breach—Action for Declaration—Continuous Breach Beginning more than 10 Years before Action—Limitations Act, R.S.O. 1914 ch. 75, secs. 5, 6 (9).

Action by the surviving executor of the will of Thomas Matheson, deceased, for a mandatory order requiring the defendants, the Municipal Corporation of the Town of Mitchell, to keep in proper order and repair, and as a public park should be kept, a certain piece of land devised to the corporation by Thomas Matheson for park purposes, or, in the alternative, for a judgment declaring that the land had reverted to the testator's estate.

The action was tried without a jury at Stratford.

J.C. Makins, K.C., for the plaintiff.

F. H. Thompson, K.C., for the defendants.

ROSE, J., in a written judgment, said that Thomas Matheson died in 1883. By his will he devised to the defendants the land in question, which is outside the town limits. The devise was to the corporation and its successors for ever and to be used and kept as a place of recreation and amusement for the inhabitants of the town for ever: "provided that if the said corporation neglects or refuses to keep the same and the fences surrounding it in proper order and repair, and as a public park should be kept, I hereby in that event cancel the said gift and direct that the said lands shall revert to and form part of my estate." A few months after the death of the testator, the town council accepted the gift, on the conditions of the will. Possession was taken on behalf of the corporation, and had ever since been retained.