

PROVISION FOR DAUGHTER—GIFT MADE TO HER UPON HER MARRIAGE IN LIFETIME OF TESTATOR—HOUSE PROPERTY CONVEYED SUBJECT TO MORTGAGE—ADVANCEMENT—ADEMPTION—PRESUMPTION—OBLIGATION OF ESTATE TO EXONERATE PROPERTY FROM MORTGAGE—COMPANY-SHARES HELD BY TESTATOR—NEW SHARES ISSUED IN LIEU OF DIVIDENDS—WHETHER INCOME OR CAPITAL—QUESTION OF FACT.

Re Bicknell, 17 O.W.N. 275.

(§ III L—191)—LAPSED LEGACY—DEATH OF LEGATEE WITHOUT ISSUE.

A bequest to a legatee who died without issue before life tenant, will lapse under a testamentary provision that the legacy, together with a share of the residue of an estate, should be payable to such legatee at the death of the life tenant, or if not surviving, that it should be divided among the former's children.

Re Vining, 12 D.L.R. 498, 4 O.W.N. 1553, 24 O.W.R. 814.

TRUSTS—DEATH OF TRUSTEE—CLASS BENEFICIARIES—GRANDCHILDREN.

The death of a trustee named in a will before the testatrix has the effect, if the trustee is not of a class with the other beneficiaries, of lapsing the gift to the trustee's share in the estate, but will not affect residuary interests of grandchildren intended by the terms of the trust, and in carrying out its object, the court will divide the subject of the gift equally between the grandchildren.

Re Cotter, 24 D.L.R. 289, 34 O.L.R. 24.

LAPSED LEGACIES—PREDECEASE OF LEGATEES—RESIDUARY CLAUSE—TRUSTS—WILLS ACT, s. 37.

Re Stewart, 8 O.W.N. 16.

LEGACIES—INSUFFICIENCY OF PERSONAL ESTATE TO PAY—DIRECTION THAT REAL ESTATE NOT TO BE ENCROACHED UPON—PROPORTIONATE ABATEMENT OF PECUNIARY LEGACIES—UNNECESSARY MOTION—COSTS.

Re Robins, 8 O.W.N. 18.

LEGACY TO CHURCH COMMITTEE—CONTRIBUTION TO "BUILDING FUND"—ULTERIOR DISPOSITION—APPLICATION TO PURPOSE INTENDED—LAPSE OF DEVISE—ARTICLE 964, C.C. QUE.

At a time when the congregation of a church was heavily encumbered with a debt incurred in building the church, a committee was formed to collect contributions to be applied in liquidating the debt by means of a "building fund," and the testatrix made her will by which she bequeathed certain real property to that committee. Several years later the committee were relieved of their duty and the building fund ceased to exist, and during the year previous to the death of the testatrix the original debt in respect of which the building fund had been established was fully paid. There remained, however, at the time of her death balances of debt still due for expenses

incurred for other building purposes. In an action to have the bequest declared to have lapsed on account of failure in its ulterior disposition:—Held, that the bequest must be construed as a bounty to the trustees of the church for the purposes of building expenses, including debts incurred for such purposes subsequent to the construction of the church; that the motive of the testatrix was not to make a contribution to any particular fund, but to benefit the congregation in respect to its building liabilities generally, and that the legacy did not lapse in consequence of the "building fund" having ceased to exist and the extinction of the debt in regard to which contributions to that fund were to be applied.

Pringle v. Anderson, 50 Can. S.C.R. 451, affirming 46 Que. S.C. 97.

(§ III L—192)—ADEMPTION.

The doctrine of ademption by subsequent portion will not be applied in favour of a stranger against a child taking a share of residue as well as legacy. [Re Heather, [1906] 2 Ch. 230.] Where a testatrix being in loco parentis to her legatee makes provision by will by way of "portion," either by legacy or by share in residue to such legatee, and afterwards makes an advance in the nature of a portion to such legatee, it will be presumed that the subsequent advance by the testatrix in her lifetime is meant to satisfy the legacy in whole or in part, and will be held an ademption of it. O'Callaghan v. Coady, 8 D.L.R. 316, 11 E.L.R. 63.

(§ III L—193)—DEDUCTION.

Where a will declares that annuities thereby created shall be paid, some as a first charge, others as a second charge, etc., on the income of an estate, any abatement incident to a deficiency of income must be borne in the order of priority stated in the will and not pro rata as between the various annuitants. Where the income of an estate varies from year to year, each year is to be considered separately; and annuities will be paid therefore in the order of priority established by will; and an annuitant who does not in any one year receive the full amount of his annuity cannot charge the arrearage upon the income of subsequent years in priority to those annuities payable in that year.

Re Irwin, 4 D.L.R. 803, 3 O.W.N. 936, 21 O.W.R. 562.

MOTION BY EXECUTORS FOR ADVICE—DEDUCTION OF AMOUNT DUE BY LEGATEE TO TESTATOR—PENDING ACTION.

Baechler v. Baechler, 6 D.L.R. 894, 4 O.W.N. 226, 23 O.W.R. 235.

(§ III L—194)—INTERPRETATION—REVOCA-TION CLAUSES.

Gifts by will given in plain and explicit language are not to be held revoked by uncertain language of a codicil, particularly where the same testamentary writings contained as to other bequests revocations clearly expressed.