

a home depended upon the fulfilment of a condition subsequent—the continuance of the life of Frederick—and was defeated or forfeited by his death. But the will did not say “during the life of Frederick,” but “as long as she remains unmarried.”

There was not, in any proper sense, a condition. If there was, the subsequent and unforeseen impossibility of literal performance avoids, not the bequest, but the condition.

Reference to *Graham v. Bolton* (1885), 9 O.R. 481; *Perry v. Walker* (1866), 12 Gr. 370.

If the condition is one that ought not to be exacted or the language is indefinite, the condition is ignored: *Clarke v. Darraugh* (1883), 5 O.R. 140; *Hamilton v. McKellar* (1878), 26 Gr. 110.

The Courts construe gifts of this character liberally in favour of the named beneficiary and to avoid forfeiture: *Hamilton v. McKellar*, *supra*; *Macklem v. Macklem* (1890), 19 O.R. 482; *Oliver v. Davidson* (1882), 11 Can. S.C.R. 166, dissenting judgments of Ritchie, C.J.C., and Henry, J.; and cases cited.

The event determining or forfeiting the interest or bequest must be something brought about by the act or omission of the beneficiary, something which he can control, or for which he is at least in a legal sense, responsible: *In re Macklem and Commissioners of Niagara Falls Park* (1887), 14 A.R. 20; *Halsbury's Laws of England*, vol. 28, paras. 1163, 1164, 1170.

Order declaring the charge in favour of Margaret. Costs of all parties out of the estate of Frederick Morton Latimer.

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MASTEN, J., IN CHAMBERS.

FEBRUARY 13TH, 1919.

RE TORONTO HAMILTON AND BUFFALO R.W. CO.  
AND McCALLUM.

*Railway—Expropriation of Land—Railway Act, R.S.C. 1906 ch. 37, sec. 196—Appointment of Arbitrator to Determine Compensation—Application for—Dispensing with Service of Notice of Application on Persons Having Interest—Appointment of Board of three Arbitrators.*

Application by the railway company, under sec. 196 of the Railway Act, R.S.C. 1906 ch. 37, for the appointment of a person to be sole arbitrator for determining the compensation to be paid by the railway company in respect of lands in the township of Sherbrooke, in the county of Haldimand.