

expressely stipulate. Were it not for this express reservation, I should agree with Mr. Fullerton's contention; but, without express provision for it, an appeal lies as of right from the judgment pronounced upon a special case. That appeal has in this case been taken by consent to the Court of Appeal: 4 Edw. VII. ch. 11, sec. 2 (76a). Unless the reservation of the right to appeal was expressed merely *ex majori cautela* (and its effect should not be so restricted, if another reasonable and legitimate purpose for its presence can be ascribed to the parties), this provision must be deemed, in my opinion, to have been inserted in order to make applicable to such appeal any special terms or conditions governing the case itself. One of these is the suspension of the reference to take evidence pending the proceedings "to obtain the opinion of the Court." This term is, I think, by the insertion of the explicit reservation of the right of appeal, extended in its application to an appeal taken pursuant to that reservation. By the agreement of the parties, therefore, upon what appears to me to be its proper construction, the proceedings before the referee are stayed.

Appeal allowed with costs to defendants in the cause.

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TEETZEL, J.

MARCH, 11TH, 1905.

WEEKLY COURT.

RE HOPKINS.

*Will—Construction—Ambiguity—Distribution of Estate—Designation of Beneficiaries—Acceleration of Distribution—Perpetuity.*

Motion by executors of will of Samuel Hopkins for order declaring construction of will and for directions to trustees.

The will was dated 1st September, 1899. The testator, after directing payment of his debts and funeral expenses, gave all his personal property to his sister Mary E. Upthegrove, and gave and devised his homestead (4 acres) in Port-Colborne to the same sister, her heirs and assigns forever. He then directed his executors to keep his other real estate rented for 10 years from his death, and the rents to be applied, first, in payment of taxes, insurance, and repairs; second, in payment of \$10 a week during that time to his son Frederick Hopkins, and \$10 a year to the caretaker of the