

date as to when he ceased to be a trustee, but it could not possibly under the facts operate as an estoppel and *cadit questio*.

The last case, *Henderson v. Henderson*, is, to say the least, unsatisfactory. It is clear law that an agreement to make a will in favor of any person is binding where there is a good consideration. The trial Judge and the dissenting Judge in the Divisional Court seemed to think that an agreement was not sufficiently made out, and the majority of the Divisional Court seemed to think that a good agreement had been made out, or one might almost infer as much from the language of the two Judges in the Divisional Court who found in the plaintiffs' favor, and yet the plaintiff was given a larger estate than her deceased husband ever claimed—that is an estate free of any charge, while the agreement, if made out, gave to the plaintiff's husband an estate in fee simple, subject to certain charges. There seems to have been a decided conflict in the evidence. The trial Judge seemed to believe the witnesses of the defence, and the majority of the Divisional Court apparently believed the witnesses of the plaintiff. There is, too, the very important element that the father of the plaintiff's husband did make a will in his favor, which certainly was a pertinent fact in favor of the contention of the plaintiff, but of course in the absence of evidence which is before the Court that element might not have been as important as it would seemingly appear. However, this is one of those cases I think that should not have been reported, particularly in view of the fact that doubtless the case will reach the Court of Appeal.

W. H. M.

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On page 206 of the last number of the Ontario Reports, it is stated in the judgment of a learned judge that "the 13 Eliz. as explained by the Act of 1872 (now R.S.O. c. 96, s. 1) was, as pointed out by Osler, J.A., in *Cameron v. Cusack*, 17 A.R., at p. 493, passed merely for the purpose of declaring that it had not been properly expounded in *Smith v. Moffatt*, 28 U.C.R., 486!" This is one of those delightful bulls of the real old Irish sort. They don't often creep into judgments, and one is therefore all the more welcome when it turns up in such an unexpected place.