

sufficiently shewn by the defendants joining in the adjustment of the loss and allowing the insured to accept from the subsequent insurers their proportion of the loss as so adjusted.

Judgment of FERGUSON, J., affirmed.

Aylesworth, K.C., for appellants. *Wallace Nesbitt*, K.C., and *T. A. Beament*, for respondents.

From Divisional Court.] HENNING *v.* MACLEAN.

[Oct. 9.

*Will—Construction—Alternative disposition—Death of testator and wife
“at the same time”—Non-interpellation of words.*

The testator bequeathed to his wife all his estate and appointed her his executrix. His will then proceeded: “In case both my wife and myself should by accident or otherwise be deprived of life at the same time I request the following disposition to be made of my property;” disposing of his estate and appointing executors. A few months after the making of the will the testator and his wife went to Europe, and both of them died there, the wife on the 11th December, 1888, and the testator on the 27th of the same month.

Held, that the testator and his wife were not deprived of life at the same time, the deaths not being the result of a common accident or other catastrophe, and as this actual event was not provided for there was an intestacy.

Held, also, that there was no power in the Court to interpellate any such words as “or in case I should survive her.”

The judgment of a Divisional Court affirmed. MACLENNAN and GARROW, JJ.A., dissenting.

C. Robinson, K.C., *H. J. Scott*, K.C., and *H. O'Brien*, K.C., for plaintiffs. *Aylesworth*, K.C., *Ball*, K.C., and *Rolphi*, for defendants.

From McDougall, Co. J.]

[Oct. 10.

IN RE LEACH AND CITY OF TORONTO.

Assessment and taxes—Local improvements—Sidewalk.

Under the agreement of the 20th of March, 1889, entered into by the Crown as representing the University of Toronto, and the City of Toronto confirmed by 52 Vict. c. 53 (O.), College Street, in the city of Toronto, has become so far a public highway of the city as to make the interest of a leasee from the Crown of land fronting on that street liable to assessment for the due proportion of the cost of the construction as a local improvement of a sidewalk in front of the leased land, even though the lease has been made before the agreement.

J. A. Faterston, K.C., for leasee. *Fullerton*, K.C., and *Chisholm*, for City of Toronto.