

Held, the testator had created a mixed fund to answer the purposes of his will. If the personality was not sufficient for the payment of the debts, then the legacies were payable out of the proceeds of the land, if it was sufficient they were payable out of the mixed fund. So far as the charitable legacies were payable out of the proceeds of the land they were void. Test proposed by Sir S. Turner in *Tench v. Cheese*, 6 D. M. G. cited as sufficient for the disposal of this question.

Held also, interest was payable on the legacies which were payable out of the land from a year after the testator's death; and that, although, as the whole interest of the proceeds of the land was given to the wife for life, the capital had to be kept invested by the executors, and there was therefore no fund for the payment of legacies till her death.

The general rule is that legacies carry interest after the expiration of a year from the death, though payment be from the condition of the estate impracticable, and though the assets have been unproductive; and this rule applied here, for the words of the will imported a present gift, and the legacies did not form part of a trust to be executed in future, in which case a different rule applies: *Wood v. Penwyre*, 13 Ves. 325; *Lord v. Lord*, L. R. 2 Ch. 784.

J. J. Foy, for the plaintiffs.

C. C. McCaul, for the defendants, Thomas Tracy and Stephen Rogers.

Fitzgerald, for the heirs-at-law.

Divisional Court.]

[June 11.]

FOLEY V. CANADA PERMANENT L. & S. CO.

Deed of infant—Affirmation—Acquiescence.

Judgment of the Chancellor, noted *supra*, vol. 18, p. 423, (where, however, it is erroneously stated that no steps were taken to disaffirm the mortgage till Dec. 7, 1881; this should be "Sept. 7, 1882," affirmed.

The rule may now be considered as well established that the deed of an infant is not void, but voidable, on his attaining his majority, if it prove to be injurious to his interest. Being voidable, he may disaffirm or affirm it on attaining majority. How this is to be proved, and within what time the option may be received, have long been subjects of controversy, but our own and the English cases establish that an infant is bound expressly to repudiate his contract

within a reasonable time after arriving at majority, and that if he neglect so to do his silence will amount to an affirmation.

C. Moss, Q.C., for the plaintiff, (appellant.)

W. Cassels and Leonard, *contra*.

Divisional Court.]

[June 11.]

HOPKINS V. HOPKINS.

Devise of rent to attesting witness—25 Geo. II., c. 6, s. 1—R. S. O. c. 108.

Judgment of PROUDFOOT, J., noted *supra* vol. 18, p. 401, affirmed.

Although it is now settled that the provisions of 25 Geo. II., c. 6, s. 1, as to beneficial gifts to attesting witnesses of wills, do not apply to wills of mere personal estate, but only to such wills and codicils as were by the Statute of frauds required to be attested,—yet the testamentary disposition of the rents pending the lease could not be considered as only tantamount to a will of personal estate *quoad* the rents,—for rent issuing out of land is a tenement; it partakes of the nature of land and is within the Statute of Frauds, which relates to lands and tenements. Consequently the case had to be dealt with as if there had been a complete intestacy as to the land in question: and the collection of the rents by the executor, instead of by the heirs-at-law, the persons rightfully entitled, and the payment of them to J. H. was, in effect, a possession of the land by J. H., in favour of whom the Statute of Limitations ran.

Moss, Q.C. and Nesbitt, for plaintiffs.

Blake, Q.C. and Lazier, for defendant, Columbus Hopkins.

Boyd, C.]

[June 20.]

RE J. T. SMITH'S TRUSTS.

Repairs by tenant for life—Settled estates—Sale by court—R. S. O. c. 60, s. 85.

Petition under Settled Estates Acts. A testator devised certain property to M. H. for life, and afterwards to any child of M. H. who might survive her in fee. She had one child, aged ten, when she presented this petition, claiming to be allowed for expenditure made by her upon two houses on the land for much needed repairs, and lasting improvements to about \$500, and for \$100 paid to a tenant for improvements made by him under a promise from the testator that the tenant should be paid for them, and for a sale by the Court.