

had not made any tender to the loan company she could not claim her costs, but it was directed in lieu of her paying costs the arrears of annuity and dower should be wiped out. *Smith v. Smith*, 205.

7. *Devise*—"Wish and desire"—*Precatory trust—Estate in fee*.—A testator, by his will, made an absolute gift of all his property to his wife, subject to the payment of debts, legacies, funeral and testamentary expenses, and by a subsequent clause provided as follows: "And it is my wish and desire, after my decease, that my said wife shall make a will dividing the real and personal estate and effects hereby devised and bequeathed to her among my said children, in such manner as she shall deem just and equitable."

Held, affirming the decision of *Ferguson, J.*, reported in 17 O. R. 548, (*ROBERTSON, J., dubitante*), that this did not create a precatory trust, and that the wife took the property absolutely.

Per *BOYD, C.*—If the entire interest in the subject of the gift is given with superadded words expressing the motive of the gift, or a confident expectation that the subject will be applied for the benefit of particular persons, but without in terms cutting down the interest before given, it will not now be held, without more, that a trust has been thereby created.

Re Adams and Kensington Vestry, 27 Ch. D. 394, and *Re Diggles, Gregory v. Edmondson*, 39 Ch. D. 253, specially referred to and followed.—*Bank of Montreal v. Bower et al.*, 226.

8. *Devise*—*Period of distribution*—*Duration of annuity*—"To be equally divided," meaning of—*Vested*

interest.—A testator, by his will, provided as follows: "I give and devise to my four daughters" (naming them), "an annuity of \$120 per year each, to be paid one year after my decease, and to be for the period of their natural lives. Also to my two grand-daughters" (children of a deceased daughter), "an annuity of \$60 each, to be paid annually, * * * which annuity will expire at the death of my last daughter. In the event of the death of any of my daughters, the annuity which she received during life to be equally divided amongst her children until the deceased of my last daughter, share and share alike. In the event of the death of my last surviving daughter, the annuities are immediately to cease, and the amount of real and personal estate in the hands of the executors is to be equally divided amongst my grandchildren, provided they are not lazy, spend-thrifts, drunkards, worthless characters, or guilty of any act of immorality."

One of the granddaughters named married and died, leaving an infant child, and her husband was appointed administrator of her estate.

Held, that each annuity given was to continue to the death of the last surviving daughter, and that the annuity of the deceased grand-daughter from the time of the last payment to her until the death of the last surviving daughter was payable to her proper personal representative for the benefit of those who were, according to law, entitled to her estate.

Held, also, that the words "to be equally divided," were equivalent to a direction to "pay and divide," and that the interest taken by the deceased grand-daughter, in the property to be divided by the executors,