

if the institution was one carried on under defendant's direction, then the removal was to be with her consent, and that the charges for caring for her there should take the place of the use of the house and furniture and the monthly allowance.

Defendant chose an institution which was not under his own direction and where she would be a paying inmate and be cared for, but the plaintiff refused to leave the house, and defendant ceased paying the monthly allowance, and plaintiff brought action for the arrears of the allowance and for the construction of the will:—

*Held*, that the will indicated that the condition of the plaintiff was one that needed care and oversight; that in 1901 the defendant came to the conclusion and made it known to her, that it would be for her welfare to give up housekeeping and take the benefit left to be brought into effect by his absolute judgment; that he had the right and authority to place her, as he had decided to do, in a sufficiently adequate home, without her consent, and that the choice he had made was such a one, and he was entitled to possession of the house and to cease paying the monthly allowance. *Leduc v. Booth* (1903), 5 O.L.R. 68.

**Direction to Keep and Maintain.]—**A testator directed his sons, to whom he devised his farm, to keep their sisters, until they married, in a suitable manner free of expense, and that so long as they, or either of them, kept house for their brothers, they or she were to have control of the poultry, eggs, butter, etc., and all moneys thence derived, for their own use and benefit. The sons were compelled to sell the farm, which was heavily encumbered:—

*Held* (affirming the decision of Street, J.), that the sons were bound to offer to support and maintain the sisters, either on the farm devised, or in the home of one of them, but that they were not bound to allow them to reside wherever the latter wished, and pay the cost of their maintenance. *Re O'Shea*, (1903), 6 O.L.R. 315.

**Devise of Lands Subject to Mortgages—Exoneration.]—**A testator by the 3rd clause of his will devised to his son X., after his mother's death, a certain lot in which the testator had given her a life estate; and also two other parcels. By the 4th clause he devised to his son a certain lot of land on condition of his paying \$1,000 to assist in paying off the mortgage on the property; but if he failed to do so, he devised the lot to his son X. By the 5th clause he devised to A. the last specified lot devised to X., to pay A. \$500 and to have his lands charged therewith. A. refused to accept the lot firstly devised to him, taking the lands secondly devised to him. This parcel was subject to a mortgage for \$750, while all the other lands were subject to a mortgage for \$4,000:—

*Held*, that X. on taking the lands firstly devised to A. was not bound to pay the

\$1,000 in reduction of the mortgage, the \$500 he was to pay A., being substituted for that liability.

By clauses 6, 7, 8 the testator devised to his three daughters three named parcels of land; and by a codicil he directed that if the mortgage on the lands was not paid, each of his daughters should pay \$150 to assist in meeting that debt, charging the lands therewith:—

*Held*, that the daughters on paying the \$150 were not entitled to hold their lands exonerated from the mortgage for \$4,000 on the lands devised to them, for under sec. 37 of the Wills Act, R.S.O. 1897, ch. 128, the devise was merely of an equity of redemption and the lands were still liable to the payment of same.

By another clause of the will the testator directed that his wife was to have free control of his lands for ten years after his death in order to pay off the mortgage, if not paid at his death. The wife predeceased the testator:—

*Held*, that the trust thereby created terminated on the death of the wife. *Re Goulet* (1903), 10 O.L.R. 197.

**Divesting—Executory Devise—Failure of—Residuary Devise.]—**A testator died in 1880, having by his will devised to his wife "all my real estate consisting of" (the lots in question and other lots) "and also all other real estate and the personal estate which I may die seized or possessed of (1) To hold the same for the benefit of my said wife for life. (2) After the death . . . of my said wife as aforesaid to hold the same for my daughter . . . during her life . . . allowing her full free use of my said personal estate and all the rents and profits, . . . (3) From and after the death of my said daughter . . . to divide the said real and personal estate between her children in such manner as she shall by her last will and testament direct and appoint and in default of such appointment to divide the same equally between the said children, . . . (4) Notwithstanding the directions hereinbefore contained I desire that if my son . . . returns to Toronto within five years from the date of my death my said executors shall hold in trust for him from the time of his return" . . . (the lots in question) "during the term of his natural life and shall pay over to him all rents, issues and profits thereof and after his death shall divide the same between his children."

The son returned within the five years. The widow died in 1902 not having married again. The son entered into the receipt of the rents and profits of the lots devised to him and died in 1904 intestate and unmarried:—

*Held*, that the contention that at most the prior interest had only been divested to the extent of the executory devise to the son for life and on his death without children the purpose of the devise was satisfied and

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