

as an estate vested in interest in the testator's children living at his death, with the period of possession only postponed until the widow's death, and regards the interest of the grandchildren as being no other than by way of transmission through their parents, the testator's children. The object of the deed, treating the estate of the testator's children to be vested under the will, *is simply to expedite the period of possession, and to obtain a transfer to each of his or her share in specie*; that is whether real or personal estate, to be so conveyed as to pass according to the nature of the estate—if real, to each child's heirs—if personal, to his or her executors and administrators. These are the only deviations from the trust purposes declared by the testator as to his residuary real and personal estate by his will, which are professed and declared to be within the contemplation of the deed, and that this was the whole scope and contemplation of the deed appears clearly, as I think, from the eighth paragraph, viz: "Inasmuch as it is doubtful whether the hereinbefore agreed upon arrangements for the settlement and distribution by the said widow and children of the said estate of the said testator can be legally assented to or carried into effect by the trustees, BY REASON OF THE COVERTURE of several of the said parties hereto, and also from the insufficiency of the powers of the said trustees under the said will, it is hereby agreed that an application shall be made to the Legislature of the Province of Ontario for an Act to confirm these presents, and for such power as may be incidental thereto, or necessary in the premises."

The object of the deed, then, was to expedite the period of possession of estates claimed to be and treated as vested in interest in the testator's children, and to obtain an immediate transfer of such vested estates in both the real and personal estates as existing, instead of in personalty only, after conversion of the realty into personalty; and the declared object of the Act, which was to be applied for, was to confirm that deed, and effect those purposes, notwithstanding the doubts as to its validity by reason of some of the parties being *femmes couvertes*, and by reason of the insufficiency of the powers given to the trustees to enable them to transfer the estate to the parties to the deed (although entitled to such vested interests) sooner than was directed by the will.

The petition to the Legislature, as set forth in the Act as the reason for the passing of the Act, stated, among other things, the execution of above deed, which was set out in full, and that the object of the deed was to secure to each of the children of the testator the immediate possession and enjoyment of their respective shares in the said residuary estate, without being postponed until the death of testator's widow, and it therefore prayed that an Act might be passed in order to confirm the said indenture and the several provisions thereof, and to effectuate the same. It was thereupon enacted—"That the said indenture of the 26th Sept. 1870, in the schedule of the Act set forth, is hereby confirmed and declared to be valid, and the said trustees of the estate of the said Honourable George Jervis Goodhue, deceased, are hereby authorised and required to carry into effect the

several provisions thereof, and in so doing are hereby saved harmless and indemnified in the premises."

Now, in so far as the question of the deed is concerned, all that the Act of the Legislature professes to do is, as it appears to me, to confirm it and make it valid, notwithstanding the doubts therein recited as to its being valid for the reasons therein stated without an Act,—to remove, in effect, simply the suggested doubts.

The Act then proposes to do no more than the deed itself purports to do, and as the deed itself suggests, it could have effectually done but for the doubts suggested. The removal of the doubts was all that was suggested to be necessary to give it complete validity. Now, under these circumstances, what is the effect of the enactment which declares the deed to be valid? A deed is said to be valid, I take it, when it is effectual to bind the parties thereto and their privies to the extent of the purposes, scope and intent of the deed as declared therein. A deed *inter partes* has no validity or binding force upon any persons not parties thereto. To be bound thereby, a person must be a party thereto or in privity with a party. Infants and married women, although parties to and executing a deed, may not be bound by the deed by reason of their legal infirmity as infants or married women; but no one, whether infant or married woman, can be in any manner affected by a deed touching and concerning matters in which they have an interest, unless they are parties thereto, or unless in virtue of some express provision of an Act of Parliament, as for instance, the Act enabling tenants in tail to bar the estate tail and all remainders. The effect of the declaration in the Act is, as it appears to me, at most to declare and enact that the deed shall be valid and binding according to its tenor and effect, true intent and meaning, upon the several parties thereto, notwithstanding the doubts expressed as to married women who had signed it not being bound, and upon the trustees of the testator's estate, notwithstanding that they were not, in their character of trustees, parties assenting thereto, in so far as to authorize them to transfer to the parties to the deed in severalty such shares as were vested in them in interest by the will, without waiting for the decease of testator's widow; but the Act does not profess to deprive, and therefore cannot be construed to have an effect so contrary to all our ideas of legislation and of natural justice as to deprive any persons, least of all infants, who are contingently made objects of the testator's bounty, of the prospective benefit of such bounty, nor does it profess to vest, and therefore we cannot construe it to have an effect so contrary to all our ideas of legislation and of natural justice as to vest in any persons an estate and interest in the testator's estate, which the testator has not himself vested in such persons, but has made contingent upon an event yet in the future.

In the absence of an express legislative enactment, we cannot, I think, having regard to the recognized rules of construction of all instruments, hold that persons who, depending upon a contingency which has not yet happened, may be entitled to share in the testator's residuary