

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

event, and, there being no specific limitation as to time, she might execute it any time during her life. Indeed the doubt would rather appear to be whether she could exercise it till after her marriage.

The testator also devised certain lands to his wife, to have and to hold the same unto his said wife, her executors, administrators, and assigns for the following uses :—To sell and dispose of the same as she should think proper and right, and the monies thereupon coming and arising to use and apply for the payment of his just debts, and for the maintenance of herself and her minor children and the education of such children as his said wife should see to be fit and necessary ; and he authorized his wife to convey to purchasers in fee, and directed that in the event of any of the said lands remaining unsold at the time when his youngest surviving child should attain 21, then the above devises and powers should cease, and the lands be subject to the trusts of his will previously declared, under which the lands were ultimately to be divided among his children.

The testator was twice married.

Held, the children and grandchildren of the testator's first marriage had no right to demand an account of the lands sold under the above provisions, or to investigate the amount required for maintenance, though the minor children might have had a right to claim a maintenance had it been refused.

Quare.—Whether wife did not take absolutely the balance of proceeds of sale not required for debts or maintenance.

In the case of separate devises, though the wife may be barred of her dower in one, she is not therefore barred of her dower in the others.

J. H. Macdonald, for the plaintiff.

Lash, Q.C., for adult children of 1st marriage.

T. S. Plumb, for infants of 1st marriage.

McTavish, for children of 2nd marriage.

Proudfoot, J.]

[June 7.

EDWARDS V. PEARSON.

Will—Construction—Cumulative legacies.

A testator, by his will, directed his debts and funeral expenses to be paid by his executors, the residue he gave as follows :—"Secondly, I give, devise and bequeath to my beloved wife the sum of \$150 annually, during the remainder of her natural life, or so long as she may remain

my widow, the said sum to be received and accepted by her in lieu of dower, the said yearly allowance to be a lien upon my real estate and to be paid my said wife as she may need it, either quarterly or half-yearly." He also gave his wife his household furniture to dispose of as she might think proper. He then directed his executors to sell his farm and all his personal property except that previously disposed of, and out of the proceeds, first, to pay all his debts and funeral charges, etc., as aforesaid ; and then to each of his daughters \$312 ; the balance then remaining was to be divided between his sons, subject to each of them securing to their mother an annual payment of \$50 during the remainder of her natural life, the security to be satisfactory to her and his executors.]

Held, there was an intention apparent on the face of the will that the annuities in favour of the wife were to be cumulative ; this appeared from the points of difference between the first annuity and the others, and the insufficiency of the estate to answer all the legacies was not a sufficient circumstance to vary this construction of the will. In the absence of any intention apparent on the face of the will, the rule is that where two legacies of quantity of equal amount are bequeathed to the same legatee in one instrument, there the second bequest is considered a repetition, and the legatee shall be entitled to only one legacy : Williams on Exec. Vol. 2, p. 1295.

Black, for the plaintiff.

C. Moss, Q.C., for the defendant Edwards.

Robinson, for the executors.

Proudfoot, J.]

[June 7.

TOOMEY V. TRACY.

Will—Construction—Mixed fund—Interest on legacies.

Special case. A testator directed his executors to pay all his just debts and general expenses out of his personal property, and if that proved insufficient then he authorized them to sell so much of his real estate as would be sufficient to make up the deficiency. He then directed his land to be sold. Then he ordered the interest of all capital arising from the sale of the land to be paid yearly to his wife for her maintenance during her natural life. He then gave a number of charitable bequests and pecuniary legacies. There was no residuary gift.