

his intention in regard to it by subsequently making a will contrary to the terms thereof.

By the will made in 1881 Kinsey had left all his property to David Young, his heirs, executors, administrators and assigns, and appointed two executors. David Young died in 1887, and the two executors named in 1886 and 1890 respectively, and the defendants, National Trust Co., in June, 1903, took out letters of administration, with the will annexed. The executors of the will of David Young were also made parties defendant in this action.

Held, following Jarman on Wills, pp. 307, 308; Williams on Executors, pp. 1072, 1074. That the bequest and devise to David Young lapsed on his death in the lifetime of the testator.

Order for judgment giving the whole estate to the plaintiff.

Haggart, K.C., and *Manning*, for plaintiff. *Wilson* and *Rothwell*, for National Trust Co. *J. Campbell*, K.C., for executors of David Young.

Province of British Columbia.

SUPREME COURT.

Full Court.]

CHRISTIE v. FRASER.

[Jan. 25.

Injunction—Sale of property—Misrepresentation—Rescission of contract.

Appeal from an order of IRVING, J., refusing to continue an injunction. An agreement for the sale of timber limits and logging outfit provided that the purchaser should pay in instalments, that he should have immediate possession of the assets sold, but that no property therein should pass to the purchaser until the purchase price was fully paid and in default of payment of any instalment the vendors might retake the assets and keep the instalments paid. The purchaser did not pay the second instalment and then repudiated the contract and sued for rescission on the ground of fraud. Defendants accepted the repudiation and resumed possession of the property which the plaintiff applied to have them restrained by interim injunction from dealing with in any way:

Held, that it was not a case for an injunction.

The court has no jurisdiction to prevent by interim injunction a party dealing with his own property as he sees fit and in which the plaintiff has no interest or to which he makes no claim. Appeal dismissed, DRAKE, J., dissenting.

McGaul, K.C., for appellant. *Kappele*, for respondent.