

Ellen or her children. Ellen's husband, unfortunately for her, attested the will, the disposition in her favour was, therefore, void, and it was contended that the disposition in favour of the children took effect; but Eady, J., refused to give effect to that contention because it was clear that, apart from s. 15, the devise must be construed as a devise to Ellen, if living at the widow's death, and if not, then to her children. But, as he pointed out, the gift to the children was only to take effect if Ellen was not living at the death of the tenant for life, an event which had not happened, consequently there was really no devise to them.

EASEMENT—PRESCRIPTION—CLAIM OF RIGHT OF WAY BY PRESCRIPTION BY ONE TENANT AGAINST ANOTHER HOLDING UNDER SAME LANDLORD—UNITY OF OWNERSHIP—DOMINANT AND SERVIENT TENEMENTS—FORTY YEARS USER BY LESSEE—PRESCRIPTION ACT, 1832 (2 & 3 WM. 4, c. 71), SS. 2, 8—(R.S.O. c. 133, SS. 35, 41).

Kilgour v. Gadles (1904) 1 K.B. 457, was an action for trespass in which the plaintiff also claimed an injunction to restrain further trespasses by the defendant. The plaintiffs were tenants of adjoining tenements held under the same landlord. For forty years during the defendant's term he had been accustomed without objection to enter on the plaintiff's premises and make use of a pump thereon, and it was to prevent his further doing so that the action was brought. The defendant claimed that he had by his forty years' user acquired a prescriptive right to an easement, relying on the Prescription Act, 1832, s. 2, (R.S.O. c. 133, s. 35). Walton, J., who tried the action, upheld his contention, but the Court of Appeal (Collins, M.R., and Romer and Mathew, L.JJ.) reversed his decision, holding that one tenant cannot acquire a title by prescription against another tenant holding under the same landlord; because the tenant's possession is the possession of the landlord, and there is consequently a unity of ownership preventing the acquisition of any prescriptive rights by either tenant against the other. The dictum of Chitty, J., in *Harris v. De Pinna*, 33 Ch. D. 238, to the contrary, was held not to be well founded.

CONTRACT—IMPOSSIBILITY OF PERFORMANCE—MONEY PAID UNDER CONTRACT—FAILURE OF CONSIDERATION—RIGHT TO PAYMENT ACCRUING BEFORE PERFORMANCE OF CONTRACT IMPOSSIBLE.

Chandler v. Webster (1904) 1 K.B. 493, was another case arising from the postponement of the Coronation. In this case the defendant agreed to let the plaintiff a room for the purpose of viewing