

time to the sister's lifetime and so valid, following *Earls v. McAlpine* (1881), 6 A. R. 145. *McRae v. McRae et al.*, 54.

3. *Repugnant Clauses—Construction.*]—A testator by the third clause of his will devised a lot of land to a son in fee simple, and by the fourth clause it was provided (as happened) that if his said son should leave no lawful heir or children the plaintiff, another son, should have the lot in fee simple.

By the fifth clause he gave his wife the use of half the lot during her life, and after her death such half of the lot was to belong to his son firstly above mentioned, in fee simple:—

*Held*, that the fourth and fifth clauses were irreconcilable; nor could they be transposed so as to reduce the fee simple in the third clause to an estate for life should the devisee therein die without issue, with remainder to the plaintiff: that the devise in the third clause was by the fourth clause cut down to an estate tail with a remainder in fee to the plaintiff, and that the fifth clause gave a life estate in the half of the lot to the testator's widow with a remainder in fee to the son firstly mentioned.

Judgment of ROBERTSON, J., varied. *McMillan v. McMillan et al.*, 627.

4. *Construction—Legacy—"Cousins"—Indefinite Disposition—Trust—Power of Appointment—General Power.*]—The testator died a bachelor, leaving no relations nearer than first cousins. By his will he gave certain specific legacies, one of which was, by clause 7, "to each of my cousins" the sum of \$1, and proceeded:—

"9. I desire that my executors

\* \* shall have full power to make such and any disposition of the residue \* \* of my \* \* estate as they, in their judgment, may deem best, and to make due inquiry into the financial and social standing of my relations in Ireland, and, after an investigation and a proper knowledge is obtained, to make such grants and disposition of a portion of my estate and property as they, in their judgment, consider best, to such relations.

"10. I also give my said executors power and desire them to dispose of any balance of my estate \* \* to the best of their judgment, where they may consider it will do the most good and deserving.

"12. I also give my executors power to hold property in trust for any of my friends whom they may think proper."

By clause 1 he appointed certain persons "executors and trustees" of his will:—

*Held*, that the word "cousins" in clause 7 must be taken to mean first cousins only.

2. That no trust was created in favour of the relations in Ireland; the power given by clauses 9 and 10 was a general power over the residue, without the creation of a trust; it was an absolute power of appointment, which the executors might exercise in favour of themselves or any other person or persons; and the heirs or next of kin could not successfully, as upon an intestacy, make any claim upon the residue, unless in case of default of appointment.

3. That the expressions used in clauses 1 and 12 did not shew that the residue was held by the executors in trust or that there was any trust connected with the power given. *Higginson et al. v. Kerr et al.*, 62.