

of his death, his interest was only contingent; that the trust for accumulation was null and void only as to excess over 21 years, and that he was not entitled to stop the accumulation during that period in order to claim a present payment.

*Held*, also, that for the period following 21 years the income should be paid out to the parties then entitled—if the plaintiff was then alive.

*Held*, also, that the plaintiff's action being to obtain a construction of the will and a declaration of his rights, rather than seeking a modification or changing of the will, it did not operate a forfeiture of his share within the meaning of the prohibitions in the will against adverse action against the testatrix's bounty. *Harrison v. Harrison* (1904), 7 O.L.R. 297.

**Alternative Disposition—Death of Testator and Wife "at the Same Time"—Executors—Technical Breaches of Trust—Limitation of Actions — "Honestly and Reasonably."**—The testator bequeathed to his wife all his estate and appointed her his executrix. His will then proceeded: "In case both my wife and myself should by accident or otherwise be deprived of life at the same time, I request the following disposition to be made of my property" disposing of the estate and appointing executors. The will made no provision for any other event. The testator and his wife shortly after the will was made went to Europe, and both of them died there, the wife on the 11th December, 1888, and the testator on the 27th of the same month:—

*Held*, that the testator and his wife were not deprived of life at the same time, the deaths not being the result of a common accident or other catastrophe, but due to ordinary disease; and, as the actual event was not provided for, there was an intestacy.

There is nothing irrational or absurd in the provision that the alternative dispositions of the will should take effect only in the event of the testator and his wife being deprived of life at the same time, even if the words "at the same time" be read as meaning, without any interval of time elapsing between the death of one and that of the other.

*Held*, also, that, although the appointment of executors to carry out the alternative provisions of the will never took effect, the persons named as executors, having obtained probate, because trustees for the persons entitled upon an intestacy; payments made by them to those who would have been beneficially entitled if the alternative provisions had taken effect were breaches of trust; but the Statute of Limitations was a bar to recovery in respect of any of those breaches which occurred more than six years before the action was brought. *R.S. O. 1897, ch. 129, sec. 32.*

*Held*, moreover, that the executors were entitled, under 62 Vict., 2nd sess., ch. 15 (O.), to be relieved from personal liability for all breaches of trust committed by

them, they having acted honestly and reasonably, in view of the facts that the construction of the will was doubtful, that the trial Judge took the same view of its effect as they did, and that for eleven years everybody interested in the estate acquiesced in that view. *Henning v. Maclean* (1901), 2 O.L.R. 169; affirmed 4 O.L.R. 660, 33 S.C.R. 305.

**After-acquired Property.]**—A testator devised "all my real estate . . . being composed of the south-east part of lot 10 . . . ." Afterwards he acquired the northerly half of said lot 10:—

*Held*, that the after-acquired property passed under the devise. *In re Smith* (1905), 10 O.L.R. 449.

**Corporation Sole—Roman Catholic Bishop—Devise of Personal and Ecclesiastical Property—Construction of Will.]**—The will of the Roman Catholic Bishop of St. John, N.B., a corporation sole, containing the following devise of his property: "Although all the church and ecclesiastical and charitable properties in the diocese are and should be vested in the Roman Catholic Bishop of St. John, New Brunswick, for the benefit of religion, education and charity, in trust according to the intentions and purposes for which they were acquired and established, yet to meet any want or mistake I give and devise and bequeath all my estate, real and personal, wherever situated, to the Roman Catholic Bishop of St. John, New Brunswick, in trust for the purposes and intentions for which they are used and established":—

*Held*, affirming the judgment appealed from, 36 N.B. Rep. 229, that the private property of the testator as well as the ecclesiastical property vested in him as bishop was devised by this clause and the fact that there were specified devises of personal property for other purposes did not alter its construction. *Travers v. Casey*, 34 S.C.R. 41.

**Debt by Devisee to Testator—Devise of all Testator's Property—Chose in Action.]**—A devise of all "my real estate and property whatsoever and of what nature and kind soever" at a place named does not include a debt due by the devisee, who resided and carried on business at such place, to the testator; 4 Ont. O.L.R. 682 affirmed. *Thorne v. Thorne*, 33 S.C.R. 309.

**Direction to Care for—Exercise of Judgment—Reasonableness.]**—A testator by his will gave the defendant all his estate on condition . . . that he pay the plaintiff \$50 a month and that she have the use of his house and furniture for her life; and by a codicil provided that if the defendant in his own absolute judgment was of opinion that it would be best for her to be cared for in some institution, he should have the right and authority to place her there, and that