

should be a present payment of the duties, based upon the estate or interest which was enjoyed. In this case that was the prior estate for years or the life of the longest lived of the children—after which came the future estate in fee, not now to be levied upon for the payment of duty.

Stated case answered in favour of defendants.

BOYD, C.

DECEMBER 12TH, 1902.

CHAMBERS.

RE NAYLOR.

*Will—Devise in Trust for Church after Expiry of Life Estates—
Time of Making Will—Statute.*

Motion by executors for order declaring the construction of a will, the question presented being with respect to a devise in trust to the Western Circuit of the Bible Christian Methodist Church after the expiry of life estates.

W. E. Middleton, for the executors.

W. F. Kerr, Cobourg, for the Church.

BOYD, C.:—The will was made more than six months before the testator's death. Therefore it was valid under R. S. O. 1877 ch. 216, sec. 19, and since the title of the church first arose on the expiry of the life estates, which was the period of "acquisition" within the meaning of sec. 12 of the Act referred to, the church might hold the land for seven years. Since the devise was covered by this clause of the statute, it did not appear necessary to consider the various cases cited and points urged. Costs out of the estate.

MACMAHON, J.

DECEMBER 12TH, 1902.

TRIAL.

BERRY v. DAYS.

Covenant—Restraint of Trade—Breach—Waiver—Injunction—Damages—Reference.

Action to recover damages for an alleged breach by the defendant of a covenant, contained in a bill of sale of defendant's drug business to the plaintiff and his son, that he (defendant) would not "directly or indirectly engage in the drug business in the village of Lucknow or within a radius of ten miles therefrom during a term of five years: and that he will not open or have part in a third or further drug store in the said village during a term of ten years." The plaintiff subsequently promoted a partnership drug business between his son and defendant, his interest in which, however, the