

the will of James Eves, and for arrears of an annuity granted thereby. By the will all testator's real and personal property was bequeathed to William Booth (the defendant) on condition that he should pay \$50 per month to the plaintiff, "she also to have the use of the house where I now live." By a codicil the will was varied by providing that if William Booth "in his own absolute judgment is of opinion that it will be best for" the plaintiff "to be cared for in some institution or hospital, . . . then the said William Booth shall have the right . . . to place her in a place where she may receive proper care, attention, and necessities for one in her condition . . . and may, with the consent of the plaintiff, "remove her to one of the institutions carried on under his direction." After the removal of plaintiff to the hospital the provision as to the plaintiff's occupation of testator's house was declared to be void, and the codicil further provided that the payment of the \$50 per month "shall not be a charge upon my property, real or personal."

J. E. Jones, for plaintiff.

A. Hoskin, K.C., for defendant.

BOYD, C.—In August, 1901, the defendant came to the conclusion, and made it known to the plaintiff, that it would be for her welfare to give up keeping house and take the substituted benefit contemplated by the will and left to be brought into effect by the absolute judgment of the defendant. He was to have the right and authority to place her in a suitable institute, with this limitation, that, if the institution was one carried on under his direction, (i.e., as part of the organization of the Salvation Army) then the removal of the plaintiff was to be with her consent. The will is not to be read as requiring the consent of the plaintiff if the defendant selected an independent and sufficiently adequate house for aged and infirm persons. This he has done in the selection he has made, and he is willing that the plaintiff should take any other place of a similar nature, and not too expensive, if she prefers it.

Judgment declaring defendant to be entitled to possession of the house, and to cease the payment of the \$50 per month, and charging him with no further sum than \$17 per month, since December, 1901; directing him (as in terms of his offer) to allow plaintiff \$15 pocket money, pay her expenses at a home not under his direction, and pay the costs of the litigation.