

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

certain lot for the purpose of erecting thereon a schoolhouse for the use of D. District, to have and to hold the same for the purpose aforesaid unto the municipal council forever. The deed was subject to a proviso that the said council should, within one year from its date, erect a schoolhouse for the use of the said District; or if the said council should at any time erect any other building save said schoolhouse and necessary offices, or should sell, lease, alien, transfer, or convey the said land, it should be lawful for the said J. LeB. and his heirs to re-enter and avoid the estate of the said municipal council.

J. LeB., by his will dated July 23rd, 1847, devised all his real estate to certain nieces, and died in the year 1848 without having revoked or altered said will. The municipal council complied with the condition by building a school-house, and at the time of the making of the will the condition had not been broken, but the successors of D. District dealt with the land otherwise than was authorized by the deed and broke the condition. The land having been sold, a petition was filed to have it declared whether the devisees under the will of J. LeB. or his heirs-at-law were entitled to the proceeds thereof.

Held, that the word "possibility" in R.S.O. c. 106, s. 2, includes a right of entry for condition broken mentioned in sec. 10, and is more extensive than that phrase, and might, therefore, be a subject of a devise, and is covered by the general name of "land." And that upon the breach of the condition, no new estate was acquired so as to require words applicable to after acquired estates to be found in the will.

The possibility of reversion was a contingent interest that existed in the testator when the will was made; the subsequent breach of the condition gave a right of entry by which the contingent interest might be converted into an estate in possession.

Held, also, that "a condition of re-entry," or condition strictly so-called, as distinguished from a conditional "limitation," is a means by which an estate or interest is to be prematurely defeated and determined, and no other estate created in its room. The condition in this case was perfectly valid. The devisees, and not the heirs of J. LeB. were consequently

held entitled to the land or the money representing it.

W. H. Miller, Q.C., for the petitioners, the devisees.

Rae, for the heirs-at law.

MacLennan, Q.C., for the infants.

Ferguson, J.]

[April 16.]

HUGGINS V. LAW.

Guardian of infants—Right to receive infants' legacies.

This was an action brought by certain legatees against the executors of the will under which they claimed, claiming the amount of their legacies. It appeared that the will devised the real and personal estate among the plaintiffs and certain other parties share and share alike; that the executors had collected the estate, converted it into money, and invested the proceeds on mortgage security, and had paid the other legatees their legacies on their attaining their respective majorities; but as to the plaintiffs' legacies, they being infants, the defendants had paid their legacies over to their guardian duly appointed by the Surrogate Court. The guardian afterwards absconded with the amount of the legacies; and the plaintiffs brought this action accordingly.

Held, that the defendants by their dealing with the estate had put themselves in the position of trustees as to the moneys aforesaid, and they were wrong in paying it over to the guardian, and judgment must go for the plaintiffs, with costs.

Guthrie, Q.C., and *Watt*, for the plaintiffs.

Bain, Q.C., and *Scanlon*, for the defendants.

Boyd, C.]

[May 5.]

DOBBIN V. DOBBIN.

Dower—Husband and wife—Equitable dower—Equity of redemption.

The plaintiff claimed dower against the heir-at-law of the intestate who created a mortgage on the lands prior to his marriage, which mortgage was still unsatisfied. He died possessed of no other property.

Held, that the mortgage being paramount to the wife's dower, which attached only upon