

WATER AND WATERCOURSES.

Prescription—Riparian Rights—Artificial Channel.—About the end of the last century an artificial channel or water-race was built across a lot now owned by the plaintiffs for the purpose of carrying water from a stream above the plaintiffs' land to a mill below, the water being diverted into the channel by means of a dam. The channel and the banks on either side of it never formed part of the plaintiffs' land having been excepted therefrom so that their land was not contiguous to the water. The defendants diverted the water and the plaintiffs were thereby deprived of the use of the same for watering their cattle:—

Held, that the plaintiffs were not riparian proprietors and could not claim any right by prescription to the use of the water.

Decision of *ROSE, J.*, reversed. *Buchanan v. Ingersoll Waterworks Company*, 456.

WILL.

1. *Devise—Restraint on Alienation—Repugnancy—Invalidity—Contingent Executory Interest—Remoteness—Perpetuities.*—In the early part of a will, lands were devised to the vendor, a son of the testator, in fee, and other lands were devised to other children, but in the latter part of the will there was this clause: "It is fully understood that my children have no power to make sale or mortgage any of the lands mentioned, but to go to their heirs and successors * * *. Should any of my children die childless leaving husband or wife, said husband or wife to have a third during the term of their natural life:—"

Held, that the first part of this clause amounted to a total restriction upon alienation, and was repugnant to the nature of the estate given by the devise, and was therefore void.

Held, that the words "die childless" in the last part of the clause should be taken to mean "die not having children or a child living at the time of such death," and this part of the clause created a contingent executory interest or estate of freehold, which, from its legal nature, would, upon the contingency happening in its favour, spring up into existence.

Held, also, that although many children of the vendor were living, none of whom was born till many years after the testator's death, and all of whom must die before the executory interest could take effect, yet the gift was not too remote, and did not infringe upon the rule against perpetuities. *Re Thomas and Shannon*, 49.

2. *Restraint on Alienation—Invalidity.*—Devise of real estate to a son with a condition as follows: "But I direct that before my said son * * * shall sell, mortgage, trade or dispose of, or encumber the said property or any part thereof, or any farm produce or timber, that he shall first obtain the consent of my sister * * *":—

Held, that the restriction being against all kinds of alienation, and in that regard absolute and unlimited, as the required consent was a condition precedent to any kind of alienation and unlimited as to time, the restraint was void.

Judgment of *FALCONBRIDGE, J.*, reversed, *MEREDITH, J.*, dissenting. *Per MEREDITH, J.*—The restraint on alienation is limited in point of

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