

earnings increased and there was money applicable to interest or dividends. The question was how this money should be applied.

Held, that the earnings applicable to interest must be paid first on the preferential stock for all the back years; and that then when these payments were satisfied the balance was applicable on the common stock.

Borden, K.C., for plaintiffs. *Drysdale*, K.C., for defendants.

Province of Manitoba.

KING'S BENCH.

Richards, J.]

LAW v. ACTION.

[Oct. 4.

Will—Revocation of legacy—Statute of Mortmain—Bequest “to the three oldest and poorest people” in the municipality.

This was an action for the construction of the codicil to the testator's will. The will gave two thousand dollars to his son William McMurray, and no other person named William was mentioned in it. The codicil was as follows: “This is a codicil to my last will and testament. I am sorry, my dear William, to make this alteration. I cut you off my will and leave you two hundred dollars. You know how you have used me to make me do this. I leave five hundred dollars to Acton School, five hundred dollars to Eden Presbyterian Church, five hundred dollars to Winnipeg Hospital, and three hundred dollars to the three oldest and poorest people in Rose-dale municipality. . . .”

Held, 1. The bequest of two thousand dollars to the son William was revoked by the codicil and that a new bequest of two hundred dollars was made to him.

2. The Statute of Mortmain, 9 Geo. 2, c. 36, is in force in Manitoba and prevents the bequest to the school district of Acton from being valid except for such proportion of it as the pure personality of the estate bears to the whole estate.

Re Stabler, 21 Q.A. 266, and *Theobald on Wills*, 15th ed., p. 342, followed; *Brook v. Badley*, 3 Ch. App. 672, and *Re Watts*, 29 Ch. D. 947, distinguished.

In the absence of legislation there is nothing to prevent a school corporation from receiving a bequest not declared void by the Statute of 9 Geo. 2, c. 36.

3. The Eden Presbyterian Church and the Winnipeg General Hospital having been empowered by legislation to receive such bequests, they are valid.

4. The gift of three hundred dollars to the three oldest and poorest people in the municipality was valid, being sufficiently certain to be carried out.