

WILL—LEGATEE OF STOCK—FAILURE OF LEGACY OWING TO
TESTATOR BEING TRUSTEE—OTHER LEGACIES INCREASED BY
FAILURE OF GIFT—COMPENSATION BY LEGATEES WHOSE
LEGACIES ARE INCREASED.

In re Macartney, Macfarlane v. McCartney (1918) 1 Ch. 300. In this case a somewhat peculiar state of facts existed. A testator by his will bequeathed to his daughter Maggie £3,000 in Australian stock, and also to Maggie and six other children, his shares in a company called McCartney, McIlray & Co., which owned 90 per cent. of the assets of the Malta Tramways, of which the £3,000 was the only asset. It turned out that the testator was trustee of this £3,000 stock for the Malta Tramways, consequently the gift thereof to Maggie failed, but the gift to the six other children was thereby increased; and the question was, whether or not the six children were bound to make compensation to Maggie to the extent of the sums by which their legacies were increased by reason of the failure of the gift of the £3,000 to her, and Neville, J., held that they were.

SANITARY AUTHORITY — NUISANCE — EASEMENT — PRESCRIPTION
—NOXIOUS MATTER SECRETLY DISCHARGED INTO PUBLIC
SEWER—INJURY TO CROPS GROWN ON SEWAGE FARM—
STATUTE OF LIMITATIONS (21 Jac. 1, c. 16)—(R.S.O. c. 75).

Liverpool v. Coghill (1918) 1 Ch. 307. This was an action by a sanitary authority to restrain the discharge into the plaintiff's sewers of noxious matter which had an injurious effect on crops grown on the plaintiff's sewage farm, over which the sewage was distributed. The defendants claimed an easement under the Statute of Limitations (21 Jac. 1), (R.S.O. c. 75) by reason of uninterrupted user for upwards of twenty years. It appeared, however, by the evidence that the noxious matter had been usually discharged at night and that neither the plaintiffs nor their predecessors in title had any notice of it until 1908, when the deleterious effects on the crops first began to be apparent. Eve, J., who tried the action found on the expert evidence adduced, that the matter discharged was in fact injurious, but that the plaintiffs had no notice of it prior to 1908, and that the defendants secret user of the sewers for the purpose gave them no prescriptive right of easement as against the plaintiff, and that the plaintiffs were therefore entitled to an injunction as prayed. He also throws out the doubt, whether, having regard to the plaintiff's statutory duty to deal effectively with the sewage, they could make such a grant as would be implied by the prescriptive right claimed by the defendants.