

Chan. Div.]

NOTES OF CANADIAN CASES.

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moneys, which were paid to them by B. as their costs of defence, were moneys of the estate of which B. was trustee, and must be held to have assented to its being so paid. See *Dillen v. Raleigh*, 13 A. R. 53, at pp. 67, 68.

Gibbons, for the plaintiffs.

Lash, Q.C., for the executors of M.

Barber, for the defendant B.

Proudfoot, J.]

[January 8.

HATTON V. BERTRAM.

Will—Construction—Passing of afterward acquired property—Devise of estate by name—Subsequent additions—Completion of building commenced by testator.

J. C. devised to J. B., G. E. S., and J. F. D. all his property and effects, real, personal and mixed, upon trust to hold "that part of my property known as Walkerfield, being the property I now reside upon, containing fifty acres more or less, until the same shall be sold by them as hereinafter provided for the use and behoof of my daughter E. M. C., so long as she may desire that the same should remain unsold, and should she desire the same to be sold, then to hold the proceeds of the same upon the same trusts and for the same purposes as hereinafter directed, with regard to the sum of \$40,000 hereinafter directed to be set out." He then directed his trustees to set apart the sum of \$40,000 to be held by them upon certain trusts, and also a certain further sum to provide an annuity of \$1,200 for his wife, and provided that after the said two funds should have been set apart, the residuary estate should be divided among his nephews and nieces, and lastly, he gave to his trustees "full and absolute power to sell and dispose of all his lands (Walkerfield, if sold in my daughter's lifetime, to be sold with her consent only) at such time or times, and in such manner as to them may seem best."

The will was made on September 10th, 1879; and J. C. died December 18th, 1885. After making the will, on June 27th, 1883, J. C. purchased five acres, and on September 21st, 1883, another five acres, forming a block of ten acres of which one corner nearly coincided with one extremity of a diagonal of "Walker-

field." On November 22nd, 1884, he sold a piece of about three and one-third acres of Walkerfield.

In his lifetime, J. C. entered into a contract in writing for the erection of a dwelling house on "Walkerfield" which was not completed at his death, and since his death the executor had paid to the contractor and architect certain sums in respect to it.

Held, (1) that the daughter was tenant for life of Walkerfield, and after her death her children took the proceeds of sale as she might appoint, and in default of appointment equally, and in default of children the residuary legatees took: (2) that the ten acres subsequently purchased passed under the devise of "Walkerfield, the evidence clearly showing that he bought it to form part of Walkerfield: (3) that the funds to build the house must come out of the residue.

Moss, Q.C., for the plaintiff.

Lash, Q.C., for the adult defendants.

MacLennan, Q.C., for the infant defendants.

Proudfoot, J.]

[January 8.

BAIN V. MALCOLM ET AL.

Will—Agreement giving effect to unexecuted will—Deficient estate—Retainer—Set-off.

J. R. endorsed notes for the accommodation of J. R. The holders received out of the estate of J. R. after his death 60 cents in the dollar, leaving \$3,500 unpaid. B., the executor of J. R., paid this. J. R., who died January 1st, 1884, left all the residue of her estate, real and personal, to be equally divided, share and share alike, between J. R., J. F., and J. B. Shortly before her death, J. R. had another will prepared, but died without executing it. There was a residuary clause in this latter will of all her property, directing a division of it into four equal parts, one share of which was to be given to J. R.

On January 4th, 1884, all persons interested in the residuary devised in these two wills, signed a written agreement on the back of the intended will, that they accepted the distribution of the estate of J. R. provided for in the latter unexecuted will.

By his own will, executed on February 13th, 1884, J. R. directed that the estate of J. R.,