

MEREDITH, C.J.]

KINSEY v. KINSEY.

[Dec. 13, 1894.

*Will—Request to agricultural society—Restrictions against Freemasonry, etc.
—Impure personality—Validity—Bequest to promote freethought—Validity.*

By one of the provisions of a will, testator directed his executors to invest \$2,000 and pay over the yearly interest to an agricultural society (incorporated under R.S.O., c. 35 (1877), under which it was authorized to acquire and hold real estate, but not to take by devise), to be applied as a premium for the best results in a specified mode of agriculture, but with a provision that all competitors should declare that they were neither Freemasons, Orangemen, nor Odd-fellows; and, in case of neglect to comply with the conditions, the executors should apply such yearly interest in procuring lectures against Freemasonry and other secret societies. The legacy was payable out of a mixed fund consisting in part of impure personality.

Held, that the society came under the Mortmain Acts, and therefore, so far as the bequest consisted of impure personality, it was void.

Held, also, that the society was not bound to expend annually the interest received by it, but might apply the money received from time to time as it might deem best, so long as it acted in good faith and did not divert the money from the purpose directed by the testator.

The executors were to invest the residue of the estate and to apply the annual interest therefrom in such way and manner as the executors should deem expedient and proper for the promotion of freethought and free speech in the Province of Ontario.

Held, that this bequest was void, as opposed to Christianity.

Pringle v. Corporation of Napanee, 43 U.C.R. 285, followed.

Haines for the plaintiff.

W. R. Riddell for Phæbe M. Howell.

A. J. Boyd for the infants, defendants, and next of kin.

Langton, Q.C., for the Agricultural Society.

J. R. Cartwright, Q.C., for the Attorney-General.

MACMAHON, J.]

MARTIN v. CHANDLAR.

[Dec. 28, 1894.

Will—Failure of issue—Meaning of.

By the second clause of a will, testator devised to his son W. the use of, and during his lifetime, certain land in C., but should he die without issue then it was to be equally divided between two named grandsons, and by the tenth clause on the death of testator's widow all his lands in C., and all other property not bequeathed by his will, were to be equally divided amongst all his children, *i.e.*, his executors were to sell same and divide the proceeds amongst said children. W. died, leaving issue. The testator's widow was also dead, her death occurring prior to W.'s.

Held, that under R.S.O., c. 109, s. 32, failure of issue referred to in the second clause was a failure during W.'s lifetime, or at his death, and not an