

"If in the opinion of my executor at the end of the said period my son has led a sober life then the whole of my estate is to go to my said son absolutely;" if not, the estate then goes to the Roman Catholic Episcopal Corporation. The executor "is to be the sole judge as to whether my said son is entitled to the said money." The son died in the summer of 1920. Up to the time of his death he was not living in such a way as, in the opinion of the executor, would have entitled him to receive the estate. Those claiming under the son sought to recover, upon the theory that the provision in the will was repugnant to the law, in that it was an attempt to oust the jurisdiction of the Court: *In re Raven*, [1915] 1 Ch. 673. This was not applicable here, as there was no gift (save of the income for 10 years) unless the son could satisfy the executor that he was living a sober life; and, to quote from the case cited, "a legatee or devisee cannot take under a will and against it; if he takes under it, he must conform to its conditions and submit to the provisos." Here, too, certain rights were claimed under a will the existence of which depended upon the fulfilment of a condition precedent and their ascertainment by a prescribed method. It was because the rights set up in *In re Raven* did not depend upon a condition precedent or ascertainment by a prescribed method that the decision was in favour of the claimant: see p. 679.

Here no right could arise in the son unless "in the opinion of my executor at the end of the said period my son has led a sober life." Clearly the son could take nothing unless *at the end of the period* he had led a sober life. The learned Judge was not prepared to say that the son must then have lived a sober life for the whole period; but the learned Judge had no doubt that what the testator charged his executor to ascertain was that then the son was living a sober life. All this was predicated upon the son living the whole 10 years, and upon a favourable judgment upon his conduct at that time by the executor.

As the son could not comply with the condition upon which alone he took, those claiming under him took nothing: The right of the son's executor to the income for the 10 years was not disputed.

The costs of all parties must come out of the fund, but the son's executor was to have no costs of the examination of the executor of the father.