

JUSTICE DUFF ON THE "RAY WILL" CASE.

We copy from the *St. John Globe*, the judgment given in this case—a very able document. Cases cited by His Lordship are omitted as only of technical value to readers.

Supreme Court in Equity.
Lockhart, surviving Executor of the last Will and Testament of Gilbert T. Ray,
vs.

The Annual Conference of New Brunswick and Prince Edward Island in connection with the Methodist Church of Canada and others.

This cause was argued before His Honor, Mr. Justice Duff, at the last January Equity Sittings at Fredericton, upon a special case agreed upon between the parties. C. W. Weldon, Esq., Q.C., and Messrs. A. C. & G. E. Fairweather, appeared for the plaintiff. James J. Kaye, Q. C., and Messrs. A. A. & R. O. Stockton, for the Methodist Church. H. L. Sturdee, Esq., for the Bible Society, and S. R. Thompson, Esq., Q. C., for the next of kin of the testator. As the determination of the question involved will be of considerable interest to many of the general public, we give below the very able judgment delivered by His Honor, Mr. Justice Duff, at the Court House, St. John, on Saturday, the 8th day of September inst. —

JUDGMENT.

Gilbert T. Ray died on the 23rd Oct., 1858, without leaving any issue. By his will he appointed the plaintiff and Aaron Eaton and John Fraser, Executors; and after giving to his wife an annuity of £300 per annum and the use of his house and furniture on Carmarthen street for life; and an annuity of £200 per annum to his sister, Rachael Hallett, for life; and from and after her death an annuity of £100 per annum for 8 years to her daughters, he bequeathed.

"To the worn out preachers and widows Fund in connection with the Wesleyan Conference here the sum of £1250, to be paid out of moneys due me by Robert Chesnut of Fredericton; to the Bible Society £150; to the Wesleyan Missionary Society in connection with the Conference here £1500."

He then gave a number of other legacies, of unequal amounts to some of his next of kin and others, amounting in the aggregate to \$31,360. In addition to a pecuniary Legacy of £1000, to one of his next of kin, he gave him "All his marsh lands in the County of Annapolis."

To another, Mrs. Fraser, he gave his house and lands on Carmarthen street, and the will then concluded as follows:—

"I hold by deed 540 acres of land in Sussex which I leave to be disposed of by my executors, at a time when they shall deem it most advantageous."

"Should there be any surplus or deficiency a pro-rata addition or deduction, as may be, to be made to the following bequests; viz:—

"Worn out preachers and widows Fund.
Wesleyan Missionary Society.
Bible Society.

"In Witness, &c., &c."

The defendants "The Annual Conference of New Brunswick and Prince Edward Island in connection with the Methodist Church of Canada," represents the bequest to the worn out preachers and widows Fund, and the Wesleyan Missionary Society; the defendants "The New Brunswick Auxiliary Bible Society" represent that to the Bible Society; and amongst the other defendants are all the next of kin to the Testator.

All the legacies mentioned in the will have been paid except one of £400 to Chas. Pritchard, which with an annuity of £100 per annum for eight (8) years to Elizabeth C. Hallett, Fanny Hallett, and Margaretta Ray Hallett, unmarried daughters of Rachael Hallett, are now the only charges on the Estate.

In addition to the lands at Annapolis, the lands devised to Mrs. Fraser, and the lands at Sussex mentioned in the will the testator died seised of a lot of land and house (No. 643) fronting on Princess Street, in the City of St. John, two lots fronting on Orange Street (Nos. 691 and 692); and another lot fronting on Orange Street (No. 736) which were appraised as of the value of £1,300.

Exclusive of these lands, the plaintiff as surviving Executor, has now in his hands personal property and assets belonging to the estate amounting to \$39,462.12. And has filed this Bill praying that it may be declared as to whether the defendants—"The Annual Conference of New Brunswick and Prince Edward Island in connection with the Methodist Church of Canada" and "The New Brunswick Auxiliary Bible Society," are entitled under the said will to the said Estate now in his hands, as surviving Executor, or who is entitled thereto; or whether the defendants, any or which of them are

entitled to it, and that the rights of all the defendants in the premises may be declared and decreed.

I am unable to arrive at any but one conclusion as to who are entitled to the moneys in the hands of the Executor, and as to the rights of the respective parties in the premises, I am not to make a will for the Testator. I am only to construe the one which he has made. It is not for me to say what Mr. Ray ought to have done with his property. I have only to decide upon what he has done with it. Individual cases have long been regarded as of little value in the construction of wills.

His personal property was largely invested in Bank and other stocks of uncertain and fluctuating value; and in shipping and other business, exposed to the hazard of trade. And in view of the character of these investments, a deficiency of assets to satisfy the legacies and annuities in full, was no impossible or even improbable contingency. Should such a contingency arise, without any provision being made to meet it, the law would make the loss fall proportionately upon all. The general legacies and annuities would all abate pro-rata. The Testator, however, has anticipated the possibility of a deficiency and has made provision for it. He has seen fit to declare that in such an event, the loss shall be borne by the charitable legatees only. In this respect he has substituted his own will for the rule which the law would otherwise have applied. He has indicated an unmistakable intention that some of the objects of his bounty should receive the precise sums which he had given them without any diminution or alteration. He has provided for the comfortable and respectable maintenance of his wife, by giving her the use of the house and furniture on Carmarthen street, and an annuity of £300 per annum for the term of her life; and this provision, it is manifest, he did not intend should be either diminished or added to. He made a sufficient provision for his sister Rachael, to place her beyond the reach of want as long as she lived. He has said that he does not intend the annuity which he has bequeathed to her to be reduced in consequence of any deficiency of assets; and I look in vain for an expression of his intention that it shall be increased in the event of a surplus. In the absence of children, whose equal and nearer kindred might be supposed to make them all equal and special objects of his regard, he has selected some from among his collateral relations to whom he has made bequests varying in amount from £500 to £2,000. It may be fairly inferred that, in fixing the various amounts of these bequests he had regard to what he considered were the necessities, or deserts of the different legatees, and the extent of their respective claims upon his bounty. This inference is justified by the circumstance that he has not treated them all alike, and by the fact that he has excepted their legacies also from the effect of the rule as to abatement.

Having granted these annuities, and having made these bequests to such of his next of kin as he thought had any claims upon him, and left them to be paid out of his whole estate he concluded what he commenced by telling us this was "his last will and testament" by declaring that "Should there be any surplus or deficiency a pro-rata addition or deduction, as may be made to the following bequests:—
"Worn out preachers' fund,"
"Wesleyan Missionary Society,"
"Bible Society."

Should there be any "deficiency" in what? In the personal estate or in the real estate or any particular portion of the property? No! but a deficiency in whatever property was available for the satisfaction of the other legacies and annuities, in this case the whole estate, real and personal, of the testator. "Surplus" of what? Of any particular fund or part of the estate? It would be a distortion of the plainest language to apply the word to any other subject matter than to that to which the word "deficiency" applies; viz., to the testator's whole estate. So applying it the testator has given the whole "surplus," after paying debts, legacies and annuities to the defendants, "The Annual Conference of New Brunswick and Prince Edward Island in connection with the Methodist Church of Canada" and the "Auxiliary Bible Society" pro-rata.

On behalf of the next of kin it was urged by their learned counsel that they cannot be disinherited by negative words; but only by express devise or by necessary implication; and it was suggested by him that as regards the testator's lands on Princess and Orange streets in the City of Saint John, at all events there was a clear intestacy. It is undoubtedly true that neither the heir or next of kin can be disinherited by mere negative words; the only mode of excluding the title of those, whomsoever they may be, that the law constitutes the successors to the property, is to give it to some one else; and a

gift can never be made by mere negative words. But whether or not there be an intestacy as to the lands in question depends upon the meaning given to the word "surplus" in the concluding clause of the will. I think that the word as there used will include those lands, and there then is an express devise of them to the Methodist Conference and the Bible Society. Considering the whole scope and scheme of the will, as I have sketched it, having reference to the connection in which the word is used and to the fact that it must relate to the same subject matter as the word "deficiency" in that connection, it seems to me to be impossible to exclude those lands from its operation. And if it was the testator's intention to pass the whole residue of his estate under it, it is sufficient. No particular form of words is required for that purpose. Mr. Thomson no doubt argued very strenuously that the word was not equivalent to the word "residue" or "remainder," and was not sufficient to pass the general residuary estate. In support of his argument upon that point he cited several cases which I shall now proceed to examine.

It will be seen that he bequeathed a number of legacies to his next of kin and others, amounting in the aggregate to \$42,960, he also gave annuities to the amount of \$2,000 during the lives of his wife and sister. He devised a portion of his real estate and he authorized his Executors to sell another portion, when they deemed it advantageous to do so; but makes no special mention of the remainder of it. Neither the legacies or the annuities are payable out of any specific fund or property; and, therefore, in law they are chargeable upon his whole estate, Real and Personal. So long as there is any real or personal property of the testator left out of which the Legatees or Annuitants can be satisfied, they are entitled to be paid in full.

The learned counsel for the next of kin urged also that the power given to the Executors to sell the land at Sussex was inconsistent with the idea of his having given them authority to sell any other portion of the Testator's land. So it may be; but it is not inconsistent with the right of the legatees to enforce payment of their legacies against all the lands. I can well understand why the Testator might deem it expedient to give the Executor authority: whenever they should get an advantageous opportunity, to sell lands in the country which might be unproductive and daily depreciating in value, and would yet prefer that town lots in a growing city like St. John, should remain unsold until the legatees themselves or the persons beneficially interested should require them to be sold.

Finally, there is nothing in the will to which I can apply the word "surplus" but to the whole residuary Estate; there is nothing in any authority which has been cited, or any that I am aware of, to prevent my construing that word, when employed in such a connection, and as it is in the will, from passing the whole residuary Estate.

There is nothing in short upon which to base a different construction of the will in my opinion, but the sentimental reason that the Testator has given some \$40,000 worth of property for religious or charitable purposes and omitted to provide for some of his next of kin. It is not for me to express any opinion upon the propriety or impropriety of the Testator's conduct in this respect. It is enough to say that the Law recognizes his right to dispose of his own property as he pleases. And many intelligent and good men have made similar dispositions of their property before him. If such a reason availed, some of the largest charitable foundations in England would have no existence at the present day, and a great many wills would be entirely inoperative.

MINUTE.

Declare that the defendants "The Annual Conference of New Brunswick and Prince Edward Island in connection with the Methodist Church of Canada" and the "New Brunswick Auxiliary Bible Society," are entitled to the whole residuary real and personal estate of the said Gilbert T. Ray, subject only to the payment of the legacy of £400 given by the said will to Charles Pritchard, son of Joseph Pritchard, and to the annuity of £100 per annum to Elizabeth C. Hallett, Fanny Hallett, and Margaretta Ray Hallett, unmarried daughters of Rachael Hallett, deceased, for the term of eight years from the death of the said Rachael Hallett.

Further consideration and costs reserved.

A small child being asked by a Sunday-school teacher, "What did the Israelites do after they had crossed the Red Sea?" answered, "I don't know, ma'am; but I guess they dried themselves."

METHODIST SUNDAY SCHOOL TREATS.

The Annual Sabbath School Treats at Trinity and English Harbor were held on Tuesday and Wednesday, 4th and 5th of September, 1877. Last year both these occasions were regarded as remarkable as remarkably successful; yet notwithstanding those recently celebrated, far surpass all that have ever been known here.

The weather proved fine in each case and a very large number assembled on these festive occasions. There was an unusually large display of bunting, as most of the children in the long procession, carried flags of different designs and colors. Another noticeable feature was the five banners, bearing inscriptions in very large letters, and of various lines—all of which were mounted on suitable stained poles, and adorned with fringes and tassels, &c. A number of Hymns were sung as the large procession moved through the principal streets of the towns. Many amusing games were engaged in at each place and enjoyable evenings were spent. At dusk public meetings were held in the Methodist Churches of each place when recitations were given by a number of the young people. A fine selection of Hymns was also sung at intervals during the meetings. Interesting and suitable addresses were delivered by the Chairman, Mr. George Christian, Junior; Messrs. G. Barnes, M. Bugden and William Ivamy, Rev. Jesse Hayfield, resident minister; and Rev. H. C. Hatcher of Random Sound. At both places the churches were filled, and good collections were taken up in behalf of the Sunday School.—*Com. to N. F. Ledger.*

REMARKABLE RESTITUTION.

Mr. George —, presently of Spring Hill, but formerly a trader in Newfoundland, chartered in the year 1870 a coasting schooner to convey for him a cargo of merchandize from a port there to Boone Bay. On the voyage the vessel was wrecked at Cape Ray. She, fortunately was insured—unfortunately the goods were not. As those on board the schooner were unable of themselves to save the cargo, Mr. — agreed with the inhabitants of the place, that if they rendered assistance in landing the goods they would receive them as salvage. On these conditions they went to work, and got all safely landed. Unfortunately for Mr. —, the natives of that part of Cape Ray had no just appreciation of the import of the words *meum and tuum*, and one can imagine his annoyance and vexation when, on the morning following the day on which they were landed, he awoke to find that all his goods had been carried off during the night—not a thing remaining. There being neither law nor authority in the place, he found it impossible to recover his property. The value of the goods was some \$1400, and the loss of them crippled, financially, Mr. —. Some three weeks ago, friend George was agreeably surprised at the receipt of a letter from Rev. Mr. Sayer, P. P., now of Newfoundland, formerly well known in this Province, asking him to state the value of the goods taken away—*taken seven years ago*. This was done, and by last mail, came a letter from the reverend gentleman, with an acceptable enclosure, and the assurance that every endeavor would be made by him to recover more.—*Hal. Her.*

OBITUARY.

MR. CHARLES DURLING.

On Wednesday, the 12th inst., Charles Durling, an old and respected resident and member of our Society, passed over from the Bridgetown circuit to the better land. On Saturday the 15th, to such of his numerous offspring as were within reach and to others the writer attempted some improvement of the occasion from Psalm xxxix. 12.—"For I am a stranger with Thee and a sojourner as all my fathers were," when the remains were committed to their resting place, awaiting the call of the last trump to endless life.

Our aged friend had through his course been favored with the means of grace, and by the emotions and drawings of the Divine Spirit. But it was during a gracious work of God, about 18 years ago, under the labors of our esteemed Bro. Ray, that he with others more fully gave him-

self to God, and to his people by His will. His characteristics were humility, a simple and practical faith in Christ, and quietness and industry. About ten years past God took his devoted partner to himself which left him in comparison lonely, though still serving God and as he could by the Divine will his own generation, until at length his accumulated infirmities rendered life undesirable. He has often told me while expressing his entire reliance on the Divine Redeemer for present and future acceptance and his hope in him, that if such were the will of God he had no desire to remain here. "If by reason of strength they be four score years, yet is their strength labor and sorrow." Ps. xc. 10.

At length without any great suffering the weary wheels of life stood still, and he was not for God took him, in the 90th year of his earthly sojourn. His living posterity to the fourth generation number 154. May his God be the God of every one of them in life, in death and forever.

J. F. B.

Bentville, Sept. 17, 1877.

Died at Felton, Santa Cruz Co., Cal., July 1st, HARRY AMBROSIO, oldest child of Angus and Carrie Fraser, aged 7 years and six months. Our dear little Harry was taken sick with diphtheria on the 20th of June. The Sunday night following he sank very low, and about four o'clock the following morning he said, "papa, I think I will die." His papa replied, "Harry, I think you will," and then asked him if there was any he wished to see. He replied, "Edie," his little sister. His papa then asked him if he had any little prayers to say before he died. He said "yes," and then repeated his morning prayers. "Harry, where will you go if you die?" "To heaven," "And who will you see there, he replied, "grandpapa." He then closed his eyes, as if the sleep of death was upon him. He continued to suffer until Sunday, July 1st. On Sunday morning he said to his mamma, "which is the best place, heaven or earth?" to which she replied, "heaven for good little boys." At six o'clock, a. m., his eyes closed to the things of this world, and opened upon things that are eternal. Now he can tell for himself, which place is best, heaven or earth." H. F.

MORIAN ACORN.

Sister Acorn was born in Pownal, P. E. Island, and was from a child taken to the Methodist Church, and received instruction in our Sabbath school. When very young she was thoughtful and serious above the ordinary. At the early age of 11 years, she obtained the pardoning love of Christ, and became identified with the church. At this time the Rev. George S. Milligan was stationed on this circuit, and she was one of a number of converts who experienced religion during a series of special services conducted by him. She was a sincere exemplary Christian. She endeavored, and succeeded in making her influence for good felt upon her youthful companions. She won universal respect.

Sister A. was one of those of whom the Apostle St. Paul, saith, "He (the Lord) chasteneth." Rarely is the life of one so young so chequered as hers. She was subjected to trials of the most perplexing nature. Yet, by the grace of God, she held fast her integrity. And as the Lord had so graciously supported her in bereavement, under other family trials, so now, in the hour of severe personal affliction and pain, God was her strength and her stay. I have seldom visited one so confiding, resigned, happy. I was impressed with her extensive knowledge of the Scriptures, her strong faith in the promises, her bold assurance of the favor and presence of God, her unshaken confidence in Christ her Saviour. In her last moments, quite conscious of her position, she was triumphant. I cannot think that the most irreligious sceptical, had he witnessed, the peace, the joy, and the glorious foretastes of heaven, which were afforded sister Acorn, could have questioned the reality of our glorious Christianity any longer. Her last words were, seeing her parents and brothers and sisters weeping, "Don't weep for me, I am going to heaven, though I am not worthy." She fell asleep in Jesus on the 20th of August, 1877, in the 35th year of her age. WM. MAGGS.

The Israelites in England are collecting subscriptions in aid of their brethren in Bulgaria, who have been robbed and oppressed by the Russians. They call on Jews all over the world for assistance, and particularly on the Union of American Hebrew Congregations. The Jews 600,000 strong in Hungary have already responded to the appeal. In Russia the persecution of the Israelites is continued, with nearly all its ancient cruelty. They are not permitted to reside in many of the greatest cities. Kief and Novogorod, as well as Moacov, are forbidden to them, and even in the rural districts they are burdened with multifarious exactions.