

charity, and two of his wife's relatives were to be executors. He did not intend to die intestate to any extent. It was his last will and testament, and every intendment ought to be made of which the language, used fairly, admits to prevent intestacy. I think the language used admits of that.

In the case of *Davies v. Davies*, 47 L. T. N. S. 42, in order to give effect to the general scope of a will, Fry, J., held that the words, "in case of my wife dying within twelve months of my own decease," meant the case of her not being alive at the expiration of the twelve months, and so included the case which happened, namely, her having died before the testator.

If it were necessary to the decision of this case, which I do not think it is, to say that the testator's act was irrational and absurd if he meant to confine the disposition made in the second clause of his will to the case of his wife and himself dying at the same moment of time, and that he did not intend to provide for the general case of his wife not surviving him, but, in case of her dying before him, meant to die intestate, I should be compelled to say it was. I think the testator has used words which are capable of a meaning which gives effect to the testator's intention, and, that being so, I think we are bound to adopt that meaning. In the *Goods of Hugo*, 2 P. D. 73, referred to by the Chief Justice of the Common Pleas in his judgment, was a totally different case from the present. There the testator had made a will, and some years after he and his wife made a joint will expressed to be "in case we should be called out of the world at one and the same time by one and the same accident." It was held to be conditional, and the event not having occurred, inoperative, so as not even to revoke the previous will.

I think the appeal should be allowed.

GARROW, J.A., gave written reasons, to the same effect, for allowing the appeal.

Appeal dismissed with costs; MACLENNAN and GARROW, J.J.A., dissenting.

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OCTOBER 9TH, 1902.

C. A.

# RE LEACH AND CITY OF TORONTO.

*Assessment and Taxes—Local Improvement Rates—Sidewalk—Lessee of Land from the Crown—Dedication of Private Way as Public Highway.*

Case stated under the Assessment Act by the Lieutenant-Governor in council for the opinion of the Court.