

having regard to certain recommendations set forth in the will.

Held, [affirming the decree reported 27 Gr. 361, where the facts are fully stated,] that the State Government was sufficiently designated as the legatee to entitle it to take the bequest; and the fact that the bequest was for the benefit of, and to take effect in a foreign country, could not be urged as an objection to its validity; neither could the objection that the state could not be made amenable to the courts of the state, and thus there would not be any supervision of the trusts, as it must be assumed that a sovereign state would not do anything to violate a trust; besides which it appeared that the legislature was not, in reality, to assume the trust, their duty being to appoint trustees who would be amenable to the Courts.

W. Cassels and Black for the appeal.

Bethune, Q.C., and *Moss*, contra.

RICKER v. RICKER.

Duty of trustee—Liberty to bid at sale—Innocent purchaser.

The plaintiff was mortgagee of certain lands, and by the will of the mortgagor was devisee thereof in trust to pay certain legacies—amongst others one to the defendant, an infant about ten years old. Having instituted proceedings against the defendant to enforce payment of the mortgage, the conduct of the sale was given to the guardian of the infant, and the plaintiff had liberty to bid at the sale under the decree as stated, 27 Gr. 576.

Held, [reversing that decree,] that the liberty to bid accorded the plaintiff, who occupied the twofold character of mortgagee and trustee, was given him for the purpose of protecting his interest as mortgagee, but did not absolve him from the duty which, as trustee, he owed to the infant; and that the conduct of the plaintiff prior to, and at and about the sale, by means of which he had been enabled to make a profit at the expense of the infant *cestui que* trust was such as would have rendered the sale invalid if the land had remained in his hands, but as it had passed into those of an innocent purchaser the plaintiff should be charged with the outside selling value of the estate at the time of the sale, or should pay to the defendant the amount due to him under the will, with interest thereon from

the date of the sale, together with the costs of the court below subsequent to the petition, and also the costs of appeal.

T. Robertson, Q.C., for appeal.

W. Cassels and Duff, contra.

EMMETT v. QUINN.

Lease, short form of—Covenant not statutory.

In a short form of lease the covenants therein were preceded by the words, prescribed by the Statute, of "The said (Lessee) covenants with the said (Lessor)," two of which covenants were that the lessee would erect a dwelling-house, etc., upon the demised premises, and leave the same and all buildings and fences so erected on the premises, thereon: And also that in the event of the buildings so erected being destroyed by fire during the term, he would rebuild to an equal amount. The lessee, with the assent of the lessor, assigned the lease, and the assignee built in pursuance of the covenant and executed a mortgage to the defendant, and on the buildings being burnt down, rebuilt them. Subsequently the defendant, on default of payment, sold, under the power in his mortgage, to one N., who also mortgaged the property to the defendant, and thereafter the buildings were again destroyed by fire.

Held, (1) [reversing the decree of BLAKE, V.C., 26 Gr. 420,] that the statutory words of covenant, in the absence of words making them expressly applicable, had not their statutory meaning when read with covenants not statutory, and therefore that the covenants above referred to applied to the lessor and lessee only.

Held, (2) [PATTERSON, J., dissenting,] that these covenants being in respect of something not *in esse* at the time of the creation of the lease, did not run with the land; "assigns" not being named.

MacLennan, Q.C., and *McClive*, for appeal.

P. McCarthy and W. Cassels, contra.

TURLEY v. BENEDICT.

Life lease—Proviso for re-entry—Ejectment.

The defendant leased to his father the lands in question in this action for life, to work and enjoy the same, but that should the father in his later years become incapable of taking charge of the place as it should be by good husbandry,