

"effected" prior to the 1st January, 1900, and the conveyance, when drawn, would be "in pursuance" of that sale.

Armour, Q.C., and W. A. Wilson, for plaintiff. Watson, Q.C., for defendants.

Boyd, C.]

IN RE HAMILTON.

[Jan. 21.

Will—Gift of income to child—Condition as to marriage—Consent of executors—Invalidity—Mixed or massed fund.

Testator died May 1, 1900, leaving a will dated March 14, 1898, in which he gave to his son out of and from the annual income and profits of the investments and rents of his real and personal estate \$300 per year while unmarried, "but, if he marries to the satisfaction of and with the consent of the executors, then he is to receive the whole annual income of the estate during his life." There was no bequest over in case the son married without consent, nor any subsequent disposal of the estate affecting these assets. The son married without consent.

Held, nevertheless, that he was entitled to the whole income.

With regard to personality the Court of Chancery long ago adopted the rule of the civil and ecclesiastical law, by which such a condition is void or regarded as merely in *terrorem*; and according to modern rules a mixed or massed fund is to be treated in the same way as personality.

Review of English authorities.

Clute, Q.C., for the son. Denmark, for executors and other legatees. F. W. Harcourt, for infants.

Armour, C.J., Falconbridge, C.J.]

[Jan. 22.]

REGINA v. TORONTO R. W. Co.

Street railways—Municipal by-law—Conviction under—Operating car without proper vestibules—Uncertainty—Persons operating car—Conductor—Valid conviction—Evidence.

Motion to make absolute a rule nisi to quash the conviction of the defendants by the police magistrate for the city of Toronto, dated the 2nd of April, 1900, "for that the said Toronto Railway Company on the 1st day of February, 1900, (being an electric railway company operating its railway within the limits of the said city) did at the said city run and operate . . . a street car . . . which was not provided with proper and sufficient vestibules to protect the motormen and persons in charge of such car from exposure to cold, snow, rain and sleet, while engaged in operating such car, contrary to the by-law of the municipality . . . passed on the 24th September, 1894, numbered 3280, and intituled: a by-law to provide for the construction of vestibules for the shelter of motormen and others upon the cars of electric railway companies."

James Bicknell, for the defendants, contended that the by-law was bad