

shall be null and void . . . and the residue of my estate shall be divided among my nephews and nieces."

The "Government" refused to waive succession duty on the legacies; and the question for determination was, whether the legacy to the Aged Women's Home was void.

The motion was heard in the Weekly Court at Toronto.

G. Lynch-Staunton, K.C., for the executors and all adult persons named as legatees.

E. D. Armour, K.C., and A. H. Gibson, for the Aged Women's Home.

F. W. Harcourt, K.C., for infants interested.

RIDDELL, J., read a judgment in which, after setting out the facts, he said that there could be no doubt that by the "Government" was meant the Executive for Ontario; and, while there was no power in this Executive to waive the statutory duties in such a case, it would seem that the testator believed that such power existed and might be exercised. The fact that this was a mistake on a matter of general law, and not of private right, was not of importance, in the view of the case adopted by the learned Judge.

The "condition" here had no reference to the conduct, act, or position of the legatee, and none to the amount of the bequest.

The testator, believing—however erroneously—that the Government had the power and might perhaps be induced to waive the succession duties on the bequests to his relatives, contemplated two possible cases: (1) that the Government would waive the duties; and (2) that it would not. He provided for either contingency. On the happening of the first contingency, the Aged Women's Home was to benefit—of the second, it was not. The second had happened, and the Home was not to benefit.

Order declaring accordingly; costs of all parties out of the lapsed part of the estate.

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AGNEW V. EAST—SUTHERLAND, J.—JULY 6.

*Payment—Claim for Price of Goods Sold and Delivered—Payment by Promissory Notes and Assignment of Mechanic's Lien—Destruction by Fire of Building on Land Covered by Lien—Application of Insurance Moneys—Mechanics and Wage-Earners Lien Act, R.S.O. 1914 ch. 140, sec. 9.]—Action for the*