

a scheme must be settled. In doing this I shall take care not to interfere with the discretion of the executors, and I shall give such instructions to the Master so to conduct his inquiry as to incur as small an amount of costs as possible, taking care that before any scheme is finally settled notice shall be given to the Attorney-General."

Subsequently the Master of the Rolls settled a scheme in favor of the Charlottetown Hospital in charge of the Sisters of Charity, for poor persons, those from the parish to which the testator belonged to have the preference.

*McDonald and Martin*, for complainants.

*McLeod, Q.C., Davies, Q.C., Wyatt and Wright*, for the heirs-at-law.

ROLLS COURT.]

YOUNG v. BRITISH AND FOREIGN BIBLE SOCIETY AND TRUSTEES OF SIR WILLIAM YOUNG.

*Devise to wife for life and then to a charity—Mortmain Act—Heir-at-law—Trustee for charity.*

Sir William Young, Surrogate of Prince Edward Island, devised and bequeathed all his property to his wife for life, and after death to the Bible Society. As to the personal property there was no question. As to the real property, it was

*Held*, (following *Gillis v. Gillis*, ante supra) that the devise was not void, but that the Bible Society, not being an incorporated body, could not take the land which descended to the heirs-at-law. But the devise to the Bible Society was a charitable bequest, and the testator's intention should not be defeated by their incapacity to hold the real property, and that the heirs-at-law should be declared trustees for the Bible Society.

The MASTER of the Rolls, in giving judgment, after referring to *Parker v. Brooke*, 9 Ves. 583; *Atty.-Gen. v. Downing*, Wilmot's Cas. 21; *Bartlett v. Nye*, 4 Met. 378, said: "It is quite true that to enforce this trust against the heir-at-law, is to take away from him and to infringe rights which the law itself has given. But the same may be said of nearly every act of the Court of Chancery. In Equity the trust, the conscience, is everything, the legal estate nothing. Sir G. Jessel's dictum in *Baker v. Sebright*, 13 Ch. D. 186, that what is called the 'encroachment' of the Court of Chancery upon legal rights, instead of being a term of opprobrium, should be deemed a term of praise, commented on and assented to. The Court of Chancery does interfere with legal rights, but it is for the improvement of the law and the furtherance of justice. When the Court administers an estate the executor is absolutely protected when carrying out its decree. Should it subsequently appear that a creditor or devisee has improperly been paid money, proceedings may be maintained by any one who has received less than he should have against the party receiving too much, but the Court will not permit any proceedings to be taken against the executor if such payment was made, in pursuance of its directions."