

and accounted for accordingly; and he gave his residuary estate equally between his son and his daughter. On the testator's death, his executors paid the trustees of his son's settlement £10,000, and gave a like sum to the daughter, and then divided the residue equally between them. The son having died without issue, the present action was brought by the daughter claiming to be entitled to one-half of the £10,000 given to the trustees of the son's settlement, in respect of the testator's contingent interest therein, which she claimed formed part of his residuary estate. The House of Lords come to the conclusion that the effect of the will was to give to the son absolutely the contingent interest of the testator in the £10,000, covenanted to be paid to his trustees, because, as Lord Macnaghten points out, to hold otherwise would be to require the son to give credit for something which never was his, and then treat that something as belonging absolutely to the testator. The contingent interest was not given to the son in the testator's lifetime, and therefore did not come under the hotchpot clause. Viewing the will in this light, the conclusion was, of course, inevitable that the contingent interest in the £10,000 was really no part of the share given to the son, for which he had to account, and the daughter's claim to a moiety of the £10,000 was accordingly rejected.

**PRACTICE**—SERVICE OUT OF JURISDICTION—CONTRACT "WHICH ACCORDING TO THE TERMS THEREOF OUGHT TO BE PERFORMED WITHIN THE JURISDICTION"—ORD. XI., R. 1 (E)—(ONT. RULE 162 (E).)

In *Comber v. Leyland* (1893) A.C. 524, the House of Lords (the Lord Chancellor and Lords Herschell, Macnaghten, Morris and Shand) have given a judicial construction to Ord. xi., r. 1 (e) (see Ont. Rule 162, c), which provides for service of a writ out of the jurisdiction, in an action founded on a contract "which according to the terms thereof ought to be performed within the jurisdiction." Their Lordships hold in effect that the word "ought" in this rule means "must," and if the contract be one which according to its terms may be performed within or without the jurisdiction, the Rule does not apply, and leave to serve the writ out of the jurisdiction