

REPORTS AND NOTES OF CASES

Dominion of Canada.

SUPREME COURT.

Ontario.] *TURNER v. BENNETT.* [Nov. 10, 1897.]

Will, construction of—"Own right heirs"—Limited testamentary power of devise—Conditional limitations—Appeal—Acquiescence by appellants in judgment appealed from—Costs.

Under a devise to the testator's "own right heirs" the beneficiaries would be those who would have taken in the case of an intestacy unless a contrary intention appears, and where a devise was to the only daughter of the testator conditionally upon events which did not occur, and, under the circumstances, could never happen, the fact of such a devise was not evidence of such contrary intention and the daughter inherited as the right heir of the testator.

Appeal dismissed with costs.

McCarthy, Q.C., McCullough and Lobb, for appellants. Wm. Mortimer Clark, Q.C., and Macklem, for respondents Bennett and others. Hodgins, for the executors.

Ontario.] *TOWNSHIP OF SOMBRA v. TOWNSHIP OF CHATHAM.* [Nov. 10, 1897.]

Municipal corporation — Assessment — Extra cost of works—Drainage — R. S. O. (1877) c. 174—46 Vict., c. 18 (Ont.)—By-law—Repairs—Misapplication of funds—Negligence—Damages — Re-assessment—Intermunicipal works.

Where a sum amply sufficient to complete drainage works as designed and authorized by the by-law for the complete construction of the drain has been paid to the municipality which undertook the works, to be applied towards their construction, and was applied in a manner and for a purpose not authorized by their by-law, such municipality cannot afterwards by another by-law levy or cause to be levied from the contributors of the fund so paid any further sum to replace the amount so misapplied or wasted.

Appeal allowed with costs.

Aylesworth, Q.C., for appellants. Wilson, Q.C. for respondents.