

thrown out of it into the open ditch at the end of the culvert and injured:—

Held, that the construction of the culvert and the guard was a thing "done in pursuance of the Act" within the meaning of section 145, and that therefore the time for bringing the action was limited to within six months after the date of the accident. *Webb v. The Barton Stoney Creek Consolidated Road Co.*, 343.

Defective.]—See MASTER AND SERVANT, 1.

WILL.

1. *Failure of issue—Meaning of*—*R. S. O. ch. 109, sec. 32.*]—By his will, testator devised to his son the use of and during his lifetime certain land, but if he died without issue, then it was to be equally divided between two named grandsons, and by a subsequent clause, on the death of testator's widow, he directed that the said land and all other property not bequeathed by his will should be equally divided amongst all his children. The son died, leaving issue, his mother predeceasing him:—

Held, that under *R. S. O. ch. 109, sec. 32*, the failure of issue referred to was a failure during the son's lifetime or at his death and not an indefinite failure; and that by virtue of the subsequent clause he took a life estate and not an estate tail by implication, and that on the termination of the life estate the lands fell in and formed part of the residue.

Re Bird and Barnard's Contract, 59 L. T. N. S. 166, and *Stobart v. Guardhouse*, 7 O. R. 239, distinguished. *Martin v. Chandlar et al.*, 81.

2. *Legacy to Widow in Lieu of Dower—Right to Annual Specific Sum—Children of Deceased Child—Right to Parent's Share—R. S. O. ch. 109, sec. 36.*]—A testator by his will bequeathed to his wife \$150 a year, payable half-yearly out of the rent of his farm until the sale thereof, when she was to be paid the interest on \$2,500 at 6 per cent., or the \$150. On the sale, \$2,500 was to be left on mortgage or invested by the executors at interest payable half-yearly to the widow during her lifetime or widowhood, and such provision was to be in lieu of dower. Legacies were given to each of testator's twelve children (one of whom was dead at the date of the will), to be paid out of the proceeds of the sale of the real estate. The residue of the deceased daughter's legacy was directed to be placed at interest and divided equally between her surviving children on their attaining twenty-one years, and in case any of testator's children died before receiving their full shares and leaving issue, the deceased's child's share was to be equally divided between his or her children; if such deceased child died without issue, his or her share was to be divided equally between his or her surviving brothers and sisters. All the residue of the estate, not thereinbefore disposed of, he gave to his children "and their issue as aforesaid provided for" to be divided equally between them from time to time as the money should become payable. The estate proved insufficient to provide for the annuity and payment of the legacies in full, and the annual interest obtainable on the \$2,500 was less than \$150:—

Held, that there was a gift to the widow of \$150 a year, and not merely of the annual interest derivable from

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