

to hold on the same trusts as the testator and to deal therewith as the General Assembly of the Church or other competent authority should direct.

J. C. Hamilton, for the executors applied for probate, citing the following authorities : *Williams on Executors*, 6th ed., vol 1, 103 ; *Stone v. Evans*, 2 Atk., 87 ; *In the goods of Nickolls*, 34 L. J. P., 103 ; *In the goods of Harris*, L. R. 2 Prob., 83.

MCDUGALL, Surrogate Judge, ordered that both documents should be admitted to probate as forming together the last will of the testator.

The account of fees demanded by the Court in respect of the trust estate included items of \$233 under R. S. O. C. 50, sec. 70, sched. A., and \$121 under sec. 71, sched. B., which were objected to on the ground that such fees were not chargeable on trust property under the Act. The Attorney-General being notified, left the matter to the decision of the Surrogate Judge.

J. C. Hamilton, for the executors : The testator being, as appears by the papers filed, for many years financial agent of the Church referred to, was invested with these funds, *ex necessitate*, as there was no committee or corporation provided to hold them. He was a bare trustee without power of disposition except under direction of the Church authorities. The only proper course open to him was to make the will and appoint his executors trustees. They have no power of disposition, save as is expressed in the will, and Dr. Reid's estate has no surviving interest in this property : *Jarman on Wills* (1861) 675 ; *Townsend v. Wilson*, 1 B. & Ald., 608. The meaning of "devolving," as used in the Act, must be considered with reference to the actual state of the property in question. This property was not the testator's, and so did not devolve, in the meaning of the Act, for the purpose of being administered : R. S. O., c. 50, secs. 16, 62, 64, and Surrogate Rules, p. 591. *Howell* : Surrogate Practice (1895), pp. 321, 539 and 540 ; *Platt v. Routh*, 6 M. & W., 756 ; *Drake v. Att'y-Gen.*, 10 Cl. & Fin., 257 ; *Re Griffiths*, 14 M. & W., 510 ; *Re Booth's Trusts*, 16 O. R., 429.

MCDUGALL, Surrogate Judge : The fees objected to are not chargeable in this matter, as the \$239,253 is trust estate in which testator had no beneficial interest whatever, and merely passed by this will the like estate to other trustees.

Province of Nova Scotia.

SUPREME COURT.

EN BANC.]

[Feb. 20.

HILLIMORE *v.* COLBOURNE.

Constitutional law—Highway Labor Act—Liability of Dominion employes—Income derivable from Dominion source.

Plaintiff was a surveyor of highways, and defendant a section man employed on the I. C. R. by the Government of Canada. In accordance with