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RIDDELL, J. JULY 3RD, 1907.

WEEKLY COURT.

DAVIES v. FOX.

Will—Construction—Bequest of Shares in Company—Distinction as to Shares Held in Different Rights — Codicil — Direction that Legatee may Purchase Shares at Par.

Motion by plaintiff for judgment on the pleadings in an action for construction of the will of Emma Davies, deceased.

J. Denovan, for plaintiff and defendant Robert H. Davies.

D. Urquhart, for defendants Fox.

F. W. Harcourt, for infant defendants and defendant Moyle.

RIDDELL, J.:—James Davies died in 1892, leaving an estate which produced amongst other amounts for his executors a number of shares in an incorporated company. By his will he devised and bequeathed to his executors (one of whom was Emma Davies) all his estate upon trust to sell and convert the same into money and to stand possessed of the same upon trust (after certain legacies) to pay the income to Emma Davies for life, and then to divide the whole in equal shares among the father, brother, and sisters of the testator, share and share alike. Ellen Davies, a sister of the testator, therefore, at the death of the testator, had a vested interest in the fund, though she could not take any interest in actual possession till the death of Emma Davies. The stock in question was not owned by James Davies, but, as James Davies had an interest in a certain business, when this business was, after his death, turned into a joint stock

company, his executors received the stock as representing James Davies's share in the business. This never has been turned into money.

Ellen Davies died in July, 1905, having bequeathed all her property to Emma Davies.

Emma Davies died in May, 1906, having made her will and codicil thereto, upon the construction of which I am asked to pass.

In the view I take of the case, I do not think that I need enter upon the consideration of the learning as to conversion and re-conversion. I think the will and codicil are clear, and their effect is plain. Emma Davies admittedly had other shares in the company in her own name, some 10 shares in all.

The will provides as follows:—

"12. I hereby give . . . unto my son Robert H. Davies all stock, provided the same does not exceed 10 shares, belonging to me or forming part of my estate, in the William Davies Company Limited . . . other than those shares in the said . . . company . . . which will fall into my estate as heir and devisee of my daughter, the late Ellen Davies.

"13. All the rest and residue of my estate . . . including the share of my daughter Ellen in the estate of James Davies, I give . . . as follows: one-third thereof to my son Robert H. Davies, the income of one-third thereof to my daughter Emma Fox, the corpus to be divided equally among her children as hereinafter provided, and one-third thereof to the children of my deceased daughter Annie Moyle, to be equally divided among them. Should my son Robert H. Davies die in my lifetime, his share of the residue of my estate shall be paid to his executors to form part of his estate. Should my daughter Emma Fox die in my lifetime, her issue shall take between them the share which their parent would have taken if she had survived me."

From this it is plain that Emma Davies distinguished between the shares she had in her own name and those to which she would become entitled as heir and devisee of Ellen Davies; and that she considered all to be part of her estate. Distinguishing as she did, she intended that her son Robert should have the former up to 10 shares, and that the rest, if she should have any more at the time of her death, and also all "which will fall into my estate as heir and devisee of my daughter, the late Ellen Davies," should become part of the residue.

It would appear that the shares appreciated in value.

Then by codicil she provides:—

"5. I hereby direct that all stock in the William Davies Company Limited that may at the time of my death form part of my estate be first offered by my executors to my son Robert H. Davies at the price of $100 per share par value."

It seems to me that the testatrix, having already shewn by her will that she considered the shares coming to her as "heir and devisee" of Ellen Davies as part of her estate, now directs that instead of Robert receiving shares in her name up to 10 free, he is to be allowed to buy all at par, and that although the shares are in the hands of the executors of James Davies. She has, I think, supplied in the will a lexicon from which we may deduce the meaning she attaches to "stock . . . that may . . . form part of my estate." Full effect should, of course, be given to the desires of the testatrix, when these can fairly be determined by the words of the testament, and that, I think, can be done here. . . .

There will be a declaration that Robert H. Davies is entitled to receive not only the shares standing in the name of Emma Davies, but also the proportionate part of the shares standing in the name of the executors of James Davies to which she is entitled.

Costs will follow the event—the costs of the official guardian as usual.

TEETZEL, J. JULY 3RD, 1907.

TRIAL.

TORONTO CREAM AND BUTTER CO. LIMITED v. CROWN BANK OF CANADA.

Banks and Banking — Warehouse Receipts — Assignment to Bank—Promissory Note—"Negotiation"—Bank Act, secs. 86, 90—Company—Formation of Joint Stock Company —Continuance of Business of Unincorporated Company under Same Name — Title to Goods Warehoused — "Written Promise"—Parties—Company in Liquidation— Liquidator—Costs.

Action by liquidator in name of company in liquidation, by order dated 26th December, 1905, under the Dominion

Winding-up Act, to recover the proceeds of 500 cases of butter sold by defendants.

I. F. Hellmuth, K. C., and J. R. Meredith, for plaintiffs.

F. Arnoldi, K. C., for defendants.

TEETZEL, J.:—Defendants claim 401 cases under 5 warehouse receipts dated respectively 21st and 26th September, and 4th, 19th, and 20th October, 1905, issued by the J. A. McLean Produce Company Limited, warehouse-keepers, to the Toronto Cream and Butter Company, and indorsed to the defendants in the name of that company by W. A. Clark, manager, on 23rd October, 1905.

On 20th October, 1905, Clark warehoused with the McLean Company 45 cases, and on 21st October, 54 cases, which comprise the other 99 cases in question, but no warehouse receipt was ever issued for them.

The Toronto Cream and Butter Company, which I will hereafter refer to as the unlimited company, was a trading name used by Mrs. Annie E. Clark, and the business was managed by her husband, W. A. Clark, under power of attorney.

By Ontario letters patent dated 5th April, 1905, the plaintiff company were incorporated, one of the objects being "to acquire and assume and continue as a going concern the business hitherto carried on under the firm name of the Toronto Cream and Butter Company." The capital stock was fixed at $60,000, $20,000 of which was to be 8 per cent. preference shares.

By agreement dated 1st June, 1905, between Mrs. Clark, carrying on business under the said trading name, of the first part, and the plaintiff company, of the second part, the former agreed to sell and the latter agreed to purchase all the property, assets, rights, credits, and interests of the party of the first part, including all plant, machinery, books, contracts, etc., together with "the goodwill of the said business, with the exclusive right to use the name 'Toronto Cream and Butter Company' as part of the name of the company, and to represent the company as carrying on such business in continuation of the vendor's firm and in succession thereto, and the right to use any words to indicate that the business was carried on in continuation of or in succession to the said firm," etc.

From this time until the liquidation order, the business was continued in the name of the unlimited company, including all the banking business, and it was not until some days after the warehouse receipts in question had been transferred, that defendants knew that a limited company had been formed, and I am not able to find that at any time before liquidation defendants or their manager knew that the business was asserted to be that of the limited company.

It should also be noted that at a meeting of the provisional directors of the plaintiff company, on 25th July, 1905, at which the usual officers were elected, a resolution was adopted that 275 fully paid up shares of the common stock of the plaintiff company be allotted to Mrs. W. A. Clark for all her right, title, and interest in the Toronto Cream and Butter Company, and that the said Toronto Cream and Butter Company Limited take over, as a going concern, all the assets, contracts, real estate, and other property and interests of the Toronto Cream and Butter Company, and assume responsibility for all liabilities aforesaid as of 1st June. At the same meeting another resolution was passed that the property occupied by the Toronto Cream and Butter Company Limited be purchased from Mr. Harry Webb for $7,000, to be paid for by an allotment of 60 shares of preferred and 10 shares of common stock of plaintiff company, to be delivered to Mr. Webb on execution of all papers necessary to a clear title. At that meeting also the Crown Bank was selected by resolution as the bank through which all the business of the company should be transacted; and the seal was produced and adopted.

A deed of the property was executed by Mr. Webb, dated 1st June, 1905, but neither the stock allotted to him nor that to Mrs. Clark was ever formally issued.

A first meeting of the shareholders of the plaintiff company was held on 20th October, 1905, when a resolution was passed sanctioning and confirming the purchase of the business and assets of the Toronto Cream and Butter Company, as set out in the proposed agreement then read, and further, that upon execution of the agreement by the Toronto Cream and Butter Company, Mrs. Clark directed and authorized the agreement to be executed by the company under its corporate seal, and authorized the directors to allot to

Mrs. Clark, or her nominee, $27,500 par value of the common stock and to do everything necessary to complete and carry out the transfer according to the agreement, and to take over and assume the business and assets and take possession under said agreement.

At the meeting of 25th July W. A. Clark was appointed general manager.

The company never appear to have passed any formal by-laws.

The agreement with Mrs. Clark bears the seal of the plaintiff company and the signatures of the president and secretary. I presume it was executed after the shareholders' meeting on 20th October, pursuant to the resolution.

There is no record of any meeting either of the directors or shareholders subsequent to 20th October, and there is no record of any other business of any kind having been done in the corporate name, but everything was carried on in the name of the unlimited company, as before.

The unlimited company had opened an account with the defendants in November, 1904, following upon a letter written by the company to the defendants' manager on 28th November, the material parts of which are: "Dear Sir: Our Mr. Clark called upon you some time ago in reference to opening an account in your bank. We would require a line of from $10,000 to $12,000, secured by warehouse receipts upon creamery butter, to be stored with the Toronto Cold Storage Company, or Canada Cold Storage Company, Montreal. Also a line of one or two thousand upon our own note, secured by our general account assets as shewn you in our statement. I may say that the latter amount of credit would only be required for a short time during the winter season, when our business is principally local. . . . ."

From the opening of the account until 23rd October, 1905, the bank had not received any warehouse receipts. On that date the bank account was overdrawn by $10,258.01, and there was under discount an unsecured note for $1,700, due November, 1905.

When the 5 warehouse receipts were indorsed to the bank, on 23rd October, 1905, Clark, in the name of the unlimited company, and as manager, signed a promissory note for $6,000 at three months, "with interest until paid," which was discounted, and the full $6,000 placed to the credit of

the account. At the same time Clark, in the name of the unlimited company, signed a hypothecation of the warehouse receipts, expressed to be in consideration of the bank having discounted the note of $6,000 and as security for its payment. The defendants' manager, Mr. Young, says that at the time Clark agreed that he would bring in further warehouse receipts sufficient to cover the debt; also, that the loan would not have been made if security had not been given or promised; but there is no evidence that the 99 cases, which had been warehoused on 20th and 21st October were then or afterwards specifically referred to by Clark.

After placing the $6,000 to the credit of the account, there remained a debit balance of $4,258.01, in addition to the current $1,700 note. This balance was thereafter gradually reduced, and at the time of the liquidation there was only outstanding the $6,000 note, a $2,000 note discounted on the 27th October, and an open debit balance of less than $200.

No attempt was made to draw out the $6,000, and the evidence leaves it uncertain whether the company would have been allowed to do so. The most I can say is that there was no express prohibition against doing so, nor was any attempt made to do so.

After the liquidation the defendant realized on the whole 500 cases, having given an indemnity to the warehouse company in respect to the 99 cases.

The following general questions arise for determination:—

(1) Had the plaintiff company any title to the 500 cases when warehoused? If the answer to this is no, of course the action fails.

(2) Assuming that they were the property of the plaintiff company, who is entitled to the proceeds of the 401 cases covered by the warehouse receipts?

(3) Who is entitled to the proceeds of the 99 cases?

As to the first question, I think the effect of the agreement between Mrs. Clark and the plaintiff company was, as against her, when it was adopted by the shareholders on 20th October, to vest in the company all her business, assets, and the right to continue the business in her trade name.

While the method adopted of continuing all the business in the name of the old company for the benefit of the

new was objectionable in many respects, and gives colour to the argument that there never was, in fact, any change of ownership or control, I think Mrs. Clark would be estopped from claiming any interest in the property then or subsequently acquired by the company, except in her capacity as stockholder, and that, therefore, the butter in question was the property of the plaintiffs when it was warehoused.

As to the 401 cases, I think defendants are entitled to hold the proceeds thereof by virtue of sec. 73 of the Bank Act, now sec. 86, R. S. O. 1906 ch. 29.

Counsel for plaintiffs submitted that the evidence brought the transaction within the prohibitive provisions of sec. 75 of the Bank Act, now sec. 90, R. S. C. 1906 ch. 29, which provides that "the bank shall not acquire or hold any warehouse receipts or bill of lading or any such security as aforesaid to secure the payment of any bill, note, debt, or liability, unless such bill, note, debt, or liability is negotiated or contracted, (a) at the time of the acquisition thereof by the bank, or (b) upon the written promise or agreement that such warehouse receipt or bill of lading or security would be given to the bank."

And it was argued that the case was governed by Halstead v. Bank of Hamilton, 27 O. R. 435, 24 A. R. 152, 28 S. C. R. 235, which decided that a bill or note taken by a banker is not "negotiated" within the meaning of this section at the time of the acquisition of the security when the person giving the security, and to whose account the proceeds of the bill or note are credited, is not at liberty to draw against them except on fulfilling certain other conditions. . . . .

I am unable to find in this case that the transaction of discounting the $6,000 note and placing the proceeds to the credit of the overdrawn account was a mere form intended only to reduce the overdraft, or that there was any restriction against the customer drawing the same out in the ordinary course of business, and, therefore, Halstead v. Bank of Hamilton would not apply.

This case is more like Ontario Bank v. O'Reilly, 12 O. L. R. 420, 8 O. W. R. 187. In that case there was negotiation of a note and an actual advance at the time of acquisition of each warehouse receipt; although on most occasions when the discount was effected the account was overdrawn, that was in the ordinary course of dealing, and the circum-

stances did not deprive the transaction of its character of a negotiation of the note, for the proceeds were placed freely at the disposal of the customers, and the drawings on the account continued as before, and it was held, distinguishing Halstead v. Bank of Hamilton, that the warehouse receipts were valid securities.

But, whatever may be the legal effect of the transaction upon the evidence of what was done when the warehouse receipts were assigned, in the light of the two cases referred to, I think the letter of 28th November, 1904, would entitle the bank to hold the warehouse receipts as security for the advances which constituted the large overdraft referred to. That letter was, in my opinion, "a written promise or agreement that such warehouse receipts would be given to the bank," within the meaning of the Bank Act, and while the warehouse receipts are not identified in it, and a different warehouse is named, I think when the customer assigned the warehouse receipts it was the intention of both parties to appropriate them to the "written promise" made when the account was opened. While the promise may not have been sufficient to entitle the bank to an equitable claim in the nature of specific performance or otherwise, upon the goods warehoused with the McLean Company, the plaintiffs cannot now, after execution of the transaction, be permitted to repudiate it.

As to the 99 cases, I am of the opinion that no warehouse receipt ever having been given or assigned in respect to them, the bank are not entitled to hold the proceeds. There was no written promise or agreement to furnish any specific warehouse receipt, no agreement to warehouse goods with the McLean Company, and no executed appropriation of the 99 cases to a written promise. At most there was a verbal agreement when the receipts for the 401 cases were assigned, with reference to further warehouse receipts, which verbal agreement being unexecuted and in violation of the Bank Act, and being beyond the power of the bank to enter into, gives no equity to the bank in reference to the goods in question: Bank of Toronto v. Perkins, 8 S. C. R. 603; Fry on Specific Performance, 4th ed., p. 217, and cases there cited.

Defendants' counsel objected that the liquidator and not the company should be plaintiff, and cited Kent v. Community of Sisters of Charity of Providence, [1903] A. C. 220.

This being an action to recover the company's property, it seems to me it is properly constituted within the authority of that case. Upon the objection being raised, the plaintiffs applied for leave to add or substitute the liquidator as plaintiff, but it does not seem to me that any amendment is necessary.

The judgment should, therefore, be in favour of plaintiffs for the net proceeds of the 90 cases received by defendants, amounting to $1,198.89, with interest at 5 per cent. from 27th January, 1906.

As plaintiffs have failed in the more substantial part of their claim, the judgment will be without costs. The defendants have also failed in a material part of their claim, and should not be allowed costs. See Suter v. Merchants Bank, 24 Gr. 365, where, under similar circumstances, the costs were disposed of in this way.

MACMAHON, J. JULY 3RD, 1907.

TRIAL.

McGUIRE v. GRAHAM.

Vendor and Purchaser—Contract for Sale of Land Made with Clerk of Vendor's Agent—Ignorance of Vendor of Position of Vendee—Right to Repudiate on Discovering Truth—Duration of Agency—Termination of Authority—Vendee Acting as Representative of Actual Purchaser.

Action by George F. McGuire against Mrs. Graham and one Hill for specific performance of an alleged agreement to sell to plaintiff the house and premises 190 King street west, in the city of Toronto. The property was owned by defendant Mrs. Graham.

C. Millar, for plaintiff.

G. H. Kilmer, for defendant Graham.

J. A. Rowland, for defendant Hill.

MACMAHON, J.:—I find that the property in question was, a year and a half ago, placed in the hands of Mr. A. G. Strathy to sell, Mrs. Graham, the owner, stating that she

was willing to take $8,000 for it. . . . During the last days of December, 1906, Harton Walker, an estate agent, had been instructed by plaintiff to purchase 60 feet of land on King street, without restricting him as to price. Walker went among the estate agents to ascertain what properties were for sale. . . . Walker called at Strathy's office on 31st December, and asked what properties he had for sale, and this property, No. 190 King street, was mentioned, and defendant Hill, who was the manager of Strathy's office, said that the price, when the property was first placed with them, was $8,000, but he thought it could then be bought for $9,000, and he at once communicated by telephone with Dr. Graham, who acted for his mother, the owner. . . Dr. Graham, after consulting with his mother, said that that sum would be accepted. . . . That was at once communicated to Walker, who stated that McGuire did not wish his name mentioned in connection with the intended purchase. . . . Mr. Smith, solicitor for Mrs. Graham, prepared an agreement in duplicate. . . . Defendant Hill, being apprehensive that the deal would fall through, said to Walker, "I will insert my name in the blank left for the intending purchaser, and push it through." This having been done, the agreement was signed by Mrs. Graham. . . . Mrs. Graham said that before she signed the document she asked who Hill was, and that Walker replied, "You need not have any hesitation about signing that, as he is a perfectly reliable person." . . .

Walker wrote to Smith on 2nd January, 1907: "To cover your objection and to satisfy the real purchaser, Mr. Hill made the offer to Mrs. Graham, and he has since assigned over all his right, title, and interest in the agreement to the real purchaser, Mr. George F. McGuire. . . ."

The question for decision simply resolves itself into this: Is Mrs. Graham, the vendor, who was, as she stated, ignorant that defendant Hill, with whom she entered into the contract of sale, was the manager of the business of Mr. Strathy, her agent and broker for the sale of the property, bound thereby?

Although Hill was, as I found at the conclusion of the trial, actuated by a desire to carry out the sale, solely for the benefit of Mrs. Graham, his non-disclosure that he was her agent for sale rendered the sale to him invalid at her option, on discovering that he was simply the clerk or manager of the business of her agent, Mr. Strathy. . . .

[Reference to McPherson v. Watt, 3 App. Cas. 254; Robertson v. Mollett, L. R. 5 C. P. at p. 655, L. R. 7 H. L. 802; Dunn v. English, L. R. 18 Eq. 524; Murphy v. O'Shea, 2 Jo. & Lat. 422; Wright on Principal and Agent, 2nd ed., p. 15; Story on Agency, 9th ed., sec. 31.]

The argument of counsel for plaintiff was, that, as Mrs. Graham had fixed $9,000 as the price at which she was willing to sell the property, the duties of her agent Strathy ended when he obtained a purchaser at such price, and he (Strathy), through Hill, in obtaining from his principal an agreement to sell at the price named, wes merely acting as a go-between or middleman . . . and, therefore, was not violating any duty he owed his principal, the vendor. . . . .

[Reference to Short v. Millard, 68 Ill. 292; Siegal v. Gould, 7 Lansing (N. Y. Sup. Ct.) 179; Rupp v. Sampson, 16 Gray (Mass.) 398; Mullin v. Keltzleb, 7 Bush (Ky.) 353; Ranney v. Donovan, 78 Mich. 318—distinguishing these cases.]

During the argument I entertained the opinion that, as Mrs. Graham, the vendor, had advised Strathy that she would accept $9,000 for the property, Strathy's offer through defendant Hill might be regarded as merely bringing the vendor and intending purchaser together, and would therefore come within the above cases in the United States Courts, cited by Mr. Millar. But, after considering these cases, I am satisfied that they do not apply to the present case. What was done was not merely bringing the vendor and the intending purchaser together and leaving them to consummate a bargain, but Hill, the manager in Strathy's office, made an offer for the property as the actual intending purchaser, which was accepted by Mrs. Graham in ignorance of his being the representative of Strathy, her agent. When she asked who Hill was, she should have been informed that he was an employee in Strathy's office, and, on being so informed, if she executed the contract, she would have been bound.

Judgment for defendants dismissing the action, as against defendant Mrs. Graham with costs, and as against defendant Hill without costs.

RIDDELL, J. JULY 4TH, 1907.

CHAMBERS.

ARNOLDI v. COCKBURN.

Particulars — Statement of Claim — Professional Services — Barrister and Solicitor—Claim for Lump Sum—Quantum Meruit — Defence of Criminal Charge — Other Services

Appeal by plaintiff from order of Master in Chambers, 9 O. W. R. 883, for particulars of statement of claim.

R. McKay, for plaintiff.

F. E. Hodgins, K. C., for defendant.

RIDDELL, J., dismissed the appeal with costs.

RIDDELL, J. JULY 4TH, 1907.

WEEKLY COURT.

RE YOUART.

Will—Construction—Gifts to Religious Bodies—Statutes of Mortmain — Legislation Permitting Societies to Take Gifts in Mortmain — Validity of Gifts — Provision for Accumulation—Right of Legatees to Immediate Payment—Application of Rule to Charities—Lapsed Gifts—Division as upon Intestacy.

Motion by personal representatives for an order under Rule 938, determining certain questions arising under the will of John Youart senior.

W. I. Dick, Milton, for applicants.

A. M. Denovan, for Upper Canada Bible Society.

H. R. Frost, for the Methodist Church.

C. L. Dunbar, Guelph, for executors.

RIDDELL, J.:—John Youart senior died in 1860, leaving his will dated 18th June, 1860, whereby, amongst other things, it was provided as follows:—

"And also I direct that, after the death of my beloved wife, all my real estate shall be sold by my executors by

public auction, for cash or credit as my executors may see fit, and that the price of said estate which is then sold, together with all the other money which may remain from sales or incomes as afore-directed, shall be put out on interest and given and divided as follows: first, $100 to be given to the Chapel Fund, and of the remainder one-half to be given to the Bible Society and the other half to be divided equally between the missionary labours of the New Connexion Methodists and the Preaching of the Gospel of the same body of Christians among us in this circuit, which moneys are to be paid in the following manner, viz., the whole of the yearly interest and $50 of the principal to be paid yearly to the Bible Society from their half, until the whole of their aforesaid half is exhausted, and the Missionary Society shall have the whole of the yearly interest and $25 of the principal yearly from their share until it is exhausted. Also they that preach the Gospel among us of the aforesaid denomination shall have the whole of the yearly interest and $25 of the principal yearly, till the whole of the Preachers' share is exhausted." (I have corrected the orthography, which is in some cases unconventional.)

The widow died 4th May, 1907; the original executors are all dead. A motion is made to the Court: (1) to determine the validity of the gifts aforesaid to (a) the Chapel Fund, (b) the Bible Society, (c) the New Connexion Methodists; (2) to determine whether the moneys should be retained by the personal representatives of the deceased, or paid over at once; and (3) to determine whether the proceeds of the real estate or any part thereof are to be divided as upon an intestacy. It is plain that the statute of 1892, now R. S. O. 1897 ch. 112, does not apply, the testator dying before 1892: sec. 2.

The two gifts (a) and (c) may be considered together. The celebrated case of Doe dem. Anderson v. Todd, 2 U. C. R. 82, is conclusive against the validity of these gifts, unless there can be set up subsequent legislation authorizing the New Connexion Methodist Church or its Chapel Fund to take in mortmain. No such legislation can be found.

For some reason—perhaps because that religious body was rather a missionary church sustaining very close relations with the parent body in England—they do not seem to have sought such legislation as the sister church, the Wesleyan Methodists, obtained in their Act of 1851, 14 & 15 Vict. ch. 142.

These two gifts, then, are void by the statutes of mortmain.

The subsequent history of the New Connexion body was appealed to as assisting in their contention. In 1874, by 38 Vict. ch. 78 (O.), three churches, the Wesleyan Methodist Church in Canada, the Wesleyan Methodist Church of East British America, and the New Connexion, have their real and personal property vested in a new church, which they had formed by union, called the Methodist Church of Canada, and by sec. 8 of that Act the provisions of 14 & 15 Vict. ch. 142 are made to apply to such new church. But there is no intimation that the provisions of 14 & 15 Vict. ch. 142 were made to apply retroactively to either of the two bodies which united with the Wesleyan Methodist Church, in whose favour the Act had been originally passed.

In 1884 this new church united with three other churches to form "the Methodist Church," and by 47 Vict. c. 88, sec. 6, the new church thus formed was given all the powers, etc., conferred upon the original body for whose benefit the Act 14 & 15 Vict. ch. 142 was passed, by that Act. But, as before, there is no retroactive effect given to this section—and sec. 7 does not take the matter any further.

As to (c), the Bible Society was sufficiently awake to the necessity of legislation to apply for an Act. This is to be found in (1855) 18 Vict. ch. 229, and it gives the society the "power to take, under any legal title whatsoever, and to hold for the use and purposes of the said corporation, without any further authorization, all property, real and personal, of what nature and kind soever, which may hereafter be sold . . . bequeathed, or granted to the said corporation:" sec. 1. The wording is substantially the same as that considered in Smith v. Methodist Church, 16 O. R. 199, and is sufficient to entitle the society to receive and hold the gift in question. The Act of 1877, 40 Vict. ch. 62, sec. 2 (O.), authorizes the Bible Society "to take or hold by gift, devise, or bequest, any land, or tenements, or interests therein, if such gift, devise, or bequest be made at least 6 months before the death of the person making the same." This legislation seems to have been passed ex abundanti cautela. Did the section just quoted stand alone, it would furnish an argument that the legislature had not intended to give by the former legislation, more extensive powers, but sec. 3 provides that "this Act shall not be construed so as in any wise to repeal, take away from, or diminish any of the rights

powers, or privileges granted" by the Act of 18 Vict. ch. 230. I am of opinion, therefore, that gift (c) is valid.

The second inquiry need give no great trouble. The provisions of the will are, that of the money given to the Bible Society the whole of the interest for the year and, in addition, $50 of the principal, be paid each year.

The rule which, after having been adumbrated in several cases, as, e.g., by Sir Lancelot Shadwell, V.-C., in Josselyn v. Josselyn, 9 Sim. 63, was laid down clearly by Lord Langdale, M.R., in Saunders v. Vautier, 14 Beav. 115, is as follows: "Where a legacy is directed to accumulate for a certain period, or where the payment is postponed, the legatee, if he has an absolute indefeasible interest in the legacy, is not bound to wait until the expiration of that period, but may require payment the moment he is competent to give a valid discharge." See also Gosling v. Gosling, Johns. 265, per Wood, V.-C. (Lord Hatherley).

In the early stages of the much litigated case which went to the House of Lords in 1895, under the name Wharton v. Masterman, Wickens, V.-C., intimated an opinion that this rule does not apply when the legatee is a charity, and he, upon an application by charities to stop an accumulation directed by the will there in question, declined so to order: Harbin v. Masterman, L. R. 12 Eq. 559. A subsequent application was made by the next of kin, and that coming on before Mr. Justice Stirling, that learned Judge thought that the Vice-Chancellor had not decided that the rule in Saunders v. Vautier had no application to charities, but that "all he meant to do was to reserve the question for decision at a later period." The learned Judge then considered at length the question of the application of the rule, and came to the conclusion that the rule was applicable to charities: Harbin v. Masterman, [1894] 2 Ch. 184, pp. 187-193, inclusive; and in that opinion the Court of Appeal and subsequently the House of Lords agreed: Harbin v. Masterman, [1894] 2 Ch. 184, pp. 195-200; Wharton v. Masterman, [1895] A. C. 186.

The whole of the money to which the Bible Society is entitled may be paid over at once.

The foregoing considerations determine the answer to the third inquiry. First, the $100 in gift (a) is taken out, and then the half of the remainder is added, and these two sums are to be divided as on an intestacy.

Costs of all parties are to be paid out of the lapsed gifts, those of the representatives of James Youart senior between solicitor and client.