SPECIFIC AND GENERAL LEGACIES.

During the past month the Law of Wills has had two important decisions added to the many which already exist. *In re Sikes*,[1] deals with a specific legacy and the effect thereon of s. 24 of the English Wills Act, 1 Vict. c. 26. In the second case, *Re Millar*,[2] the gift constituted a general legacy and was not affected by the operation of s. 27 (1) of the Ontario Wills Act, R.S.O. 1914, c. 120, which section corresponds to s. 24 of the English Act already mentioned.

In the case of *In re Sikes*, the testatrix bequeathed "my piano" to a friend. Subsequent to the making of the will, the testatrix disposed of the instrument which she possessed when she made her will and purchased a more expensive piano. It was held that the gift was of a specific article, that the wording of the will constituted a contrary intention sufficient to take the gift out of the operation of s. 24, and that the piano which she possessed at her death did not pass. Section 24 enacts that every will shall be construed with reference to the real and personal estate comprised in it, to speak and take effect as if it had been executed immediately prior to the death of the testator, unless a contrary intention appears by the will.

In the Millar will one of the clauses gave to certain persons and bodies "one share of the O'Keefe Brewery Company of Toronto, Limited." The company referred to had been incorporated in 1892, and had changed its name twice since that date. The testator at the time of his death held no shares in that company, although he did hold shares in another allied company with a similar name; therefore he had bequeathed shares which he did not own, and the gift constituted a general legacy.[3] The beneficiaries were held to be entitled each to a share in the original company, if such shares were procurable, or alternatively, if they so desired, its value in money[4].

In this note it is hoped that the cases which have been chosen from those reported will illustrate the distinction between specific and general legacies, the effect of s. 24 of the English Wills Act, and s. 27 (1) of the Ontario Act, and the effect of a change in the

[1] L.R. [1927] 1 Ch. 364.
[2] [1927] 3 D.L.R. 270; 32 O.W.N. 158, 60 O.L.R. 454.
[3] Theobald on Wills, 7th Ed., p. 148.
[4] *In re Gray* (1887), 36 Ch.D. 205.

name or nature of an article between the date of the will disposing of it and the death of the testator.

The case of *Goodlad* v. *Burnett*,[5] seems to be the leading case on the subject, and the following passage taken from the judgment of Vice-Chancellor Sir W. Page Wood has been quoted many times:

"When I refer to a particular thing . . . and bequeath it as 'my ring' or 'my horse,' it seems to me there might be considerable difficulty in saying that the 'contrary intention,' to which the Act (Wills Act) in its 24th section refers, does not appear on the face of the will; but when a bequest is of that which is generic—of that which may be increased or diminished, then, I apprehend, the Wills Act requires something more on the face of the will for the purpose of indicating such 'contrary intention' than the mere circumstance that the subject of the bequest is designated by the pronoun 'my.'" In this case, the testatrix had bequeathed "my New Three-and-a-quarter per Cent. Annuities," and it was held that the bequest comprised all the new three-and-a-quarter per cent. annuities which she had at the time of her death.

Bothamley v. *Sherson*,[6] is a case which has not been referred to very frequently, but which seems to be still good law. It holds that legacies which before the passing of the Wills Act would have been specific remain specific, and a gift of "all my stock in the M. R. Company" is specific. The legatee was held entitled to the stock which the testator held at the date of the will. Prior to his death the testator had transferred this stock, subject to a re-transfer to himself, which had not taken place before his death. Referring to *Knight* v. *Davis*,[7] it was held that where a specific legacy is pledged by the testator, the specific legatee is entitled to compensation to the amount of the legacy, against the general assets of the testator.

In *In re Slater*[8] the testator bequeathed "the interest from money invested in" a certain company. Between the making of the will and the death this company was handed over to another company, which issued stock to the testator as compensation in respect of the ordinary stock which he held in the original company at the date of his will. By virtue of s. 24, it was held that as a matter of construction, this bequest passed so much and no more money than the testator had invested in the original company at the time of his death.

In re Gillins[9] holds that where a testator wills 25 shares in a company which at the time of the making of the will were worth £50 each, and which owing to a reorganization were worth only

[5] 1 K. & J. 341, at p. 348.
[6] (1875) L.R. 20 Eq. 304.
[7] 3 My. & K. 358.
[8] [1906] 2 Ch. 480, affirmed [1907] 1 Ch. 665.
[9] [1909] 1 Ch. 345.

£10 at the time of the death, s. 24 applies, and the £10 shares were the ones which passed, the legacy being a general one.

In re Clifford[10] decides that a bequest of "23 shares belonging to me in a certain company" is a specific legacy of a thing which could neither be increased nor diminished by events subsequent to the will, and there was a sufficient contrary intention to exclude the operation of s. 24 of the Wills Act. Between the date of the will and the death, the 23 shares, owing to re-organization, had been changed in both name and form, but existed substantially in their subdivided form. It was held that the legatee took an amount of the new shares equivalent to those mentioned in the will.

In re Kuypers[11] follows the rule stated in *In re Slater*, that where between the date of the will and the death, a company, shares in which have been disposed of by the will, has been reorganized and the new shares have been issued in the place of the original shares, the devisee must take only those new shares which are really the old shares under another name, even although their value is substantially reduced.

In re Davies[12] is a recent example of a generic bequest coming within s. 24 of the Wills Act, whereby the widow was held entitled to take the proceeds of sales made after as well as before the date of the will, the devise in question reading as follows: ". . . . and also the investments and moneys representing the proceeds of sale of such parts of the said estate as has been sold . . . . to my wife in fee simple absolutely."

Coming to Ontario, there is the case of *Re Warren*.[13] The will in this case gave shares in a certain company in trust for certain purposes. The residue of the estate was given to the testator's widow absolutely. Between the date of the will and the death, a new company was incorporated. As a result, the testator became possessed of shares in the new company while still retaining the shares in the old company, which had no real value. Applying s. 27 (1) of our Wills Act, it was held that the shares in the new company passed to the widow under the general gift.

The following cases deal with the bequest of a certain specific object which has been added to in the interval between the making of the will and the death.

[10] [1912] 1 Ch. 29.
[11] [1925] 1 Ch. 244.
[12] [1925] 1 Ch. 642.
[13] (1922) 52 O.L.R. 127.

In Castle v. *Fox*,[14] the testator bequeathed "Cleeve Court." It was held that all the property acquired after the date of the will and treated by the testator immediately before his death as an addition to the Cleeve Court estate, passed under the specific devise, s. 24 applying.

In re Portal and Lamb,[15] a cottage and land at S. were bequeathed to be preserved "in their present state." The testator contracted after the date of the will to purchase more extensive property at S., but died before the completion of the contract. It was held that a contrary intention within the meaning of s. 24 was not shewn with sufficient clearness, but that considering the circumstances of the case, the specific devise did not carry the after acquired property. Incidentally, this decision reverses the judgment of Kay J. reported in L.R. 27 Ch. at p. 600.

In the case of In re Horton,[16] a testator devised all his copyhold hereditaments at L. "now held by me as a customary tenant of the said manor or otherwise." Before his death he acquired the other undivided moiety in the copyhold so that, at his death, he possessed the entirety. It was held that the will operated to pass the entirety, and that a contrary intention within the meaning of s. 24 was not shewn, the expression "now held by me" being mere additional description of the property and not an essential part of the description, cutting down the earlier part of the devise.

There remain three Ontario cases. *Re Rutherford*,[17] holds that when the thing bequeathed remains and has been added to between the date of the will and the death, the whole property answering the description at the later date passes under s. 27 (1) of the Ontario Wills Act.

Re Rogers,[18] lays down the principle that where property is described in the will by metes and bounds, after acquired property does not pass, s. 27 (1) of the Wills Act applying.

Re West,[19] deals with a will disposing of two properties, one already subject to a mortgage. Prior to the death the other was also mortgaged. Under s. 38 (1) of the Ontario Act, which corresponds to the English Real Estate Charges Act, 17 & 18 Vict., c. 113, better known as Locke King's Act, the devisee of this second property was

[14] L.R. 11 Eq. 542.
[15] (1885) 30 Ch. 50.
[16] [1920] 2 Ch. 1.
[17] (1918) 42 O.L.R. 405.
[18] (1920) 47 O.L.R. 82.
[19] (1925-26) 29 O.W.N. 270.

not entitled to have the mortgage discharged out of the estate; s. 27 (1) applies and the will speaks as from the death.

In the recent Ontario case [20] the effect of s. 38 on real property as distinguished from the law regarding personal property under the old rule is pointed out.

In conclusion, it would seem that when Koheleth said, "There is no new thing under the sun," he most certainly could not have contemplated the many wills which have come down through the ages, since each by the addition or omission of a mere word may differ so greatly from those preceding it as to cause both lawyer and legatee many hours of anxiety and uncertainty.

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[20] *Re Simpson*, 60 O.L.R. 310, (1927) 2 D.L.R. 1043.

THE SPICE OF LIFE.—Edward Blair Mitchell, who died the other day, in London, at the ripe age of eighty-four, seems to have found his philosophy of life embedded in the phrase: *Diversité, c'est ma devise.* He was a member of the Bar and a writer of books—although it has not been our privilege to learn just how great he was in either of these capacities. In his early days he was one of the world's greatest amateur athletes. As an oarsman he was the winner of several trophies. He was the holder of the amateur walking championship of the world, as well as of the amateur lightweight, middleweight and heavyweight boxing titles of England.