



[Whitby v. Mitchell]

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PERPETUITIES IN THE LAW OF REAL PROPERTY—THE RULE IN *WHITBY V. MITCHELL*—AMENDMENT OF THE LAW IN BRITISH COLUMBIA.—A recent amendment to the British Columbia Laws Declaratory Act (R.S.B.C. 1957, c. 33, assented to March 28, 1957), (1) abolished the common law rule of *Whitby v. Mitchell* relating to future interests, and (2) provided that in the case of a future interest in a will, settlement or other instrument where vesting is dependent on the attainment by the beneficiary of an *age exceeding twenty-one years*, the will or instrument shall take effect as if the stipulated age had been twenty-one years. The relevant sections of the statute are as follows:

- 36 (a) The rule of law prohibiting the limitation, after a life interest to an unborn person, of an interest in property to the unborn child or other issue of an unborn person is abolished, but without prejudice to any other rule relating to perpetuities;
- (b) Where in a will, settlement, or other instrument the absolute vesting either of capital or of income of property in, or the ascertainment of, a beneficiary or class of beneficiaries, is made to depend on the attainment by the beneficiary or any member or members of the class of an age exceeding twenty-one years, and thereby a gift to that beneficiary or class, or any member thereof, or any gift over, remainder, executory limitation, or trust arising on the total or partial failure of the original gift, is, or but for this sub-clause would be, rendered void for remoteness, the will, settlement, or other instrument takes effect for the purposes of such gift, gift over, remainder, executory limitation, or trust as if the absolute vesting or ascertainment aforesaid had been made to depend on the attainment by the beneficiary or such member or members of the age of twenty-one years, and that age is substituted for the age stated in the will, settlement or other instrument.

⁶ See footnote 1 *ante* at p. 387.

⁷ See footnote 3 *ante* at p. 580.

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