

"my will and desire, provided my (said) son shall have no lawful heir or children, that the above mentioned tract of land, after his death, that (the plaintiff) shall have it with all the right and title that my (said) son had to it heretofore." By the fifth clause he gave to his wife "the use" of half the lot, "during life; after her decease my will is that the same shall belong to my (said) son, his heirs and assigns forever." The son died after the testator without having had any children:—

*Held*, that the fifth clause removed from the operation of the third and fourth clauses one half of the lot which vested in the son subject to the mother's life estate, while as to the other half the son had under the third clause an estate in fee simple subject under the fourth clause to an executory devise over in favour of the plaintiff, which, in the events which had happened, had taken effect. Judgment of a Divisional Court, 35 C.L.J. 445; 30 O.R. 627, affirmed.

*R. Smith*, for the appellant. *J. H. Moss*, for the respondent.

From Armour, C. J.]

[March 27.

CHOATE v. ONTARIO ROLLING MILLS COMPANY.

*Master and servant—Negligence—Dangerous process—Want of warning.*

The plaintiff while employed in removing the cut pieces from a pair of shears worked by steam power was struck by a flying piece of metal and severely injured. The machine was perfect of its kind and it was not shown that a screen or guard could have been used, and the plaintiff was aware that there was danger. The danger when steel was being cut was greater than when iron was being cut, and the accident happened when steel was being cut.

*Held*, that there should have been some warning that steel was about to be cut, and that this means of reducing the possible danger not having been adopted, the defendants were liable in damages as at common law. Judgment of ARMOUR, C.J., affirmed.

*Osler*, Q.C., and *John Greer*, for appellants. *Teetsel*, Q.C., and *A. M. Lewis*, for respondent.

From Meredith, C.J.]

EWING v. HEWITT.

[March 27.

*Nuisance — Highway — Obstruction — Continuing nuisance created by another.*

The owner of a house abutting on a highway placed without authority a trap-door in the sidewalk in order to obtain an entrance to his cellar, the hinges of the trap-door projecting about an inch above the sidewalk. The defendant obtained title from this owner and continued to use the trap-door, and the plaintiff, while lawfully using the highway, stumbled against the hinges and was hurt.