join with the plaintiff to set aside the mortgage, and as both the plaintiff and the company take the position that the mortgage was void *in toto*, and the defendants insisted that it was valid, and that the action ought to be dismissed, there should be no costs up to and inclusive of this judgment.

The costs of the reference may be disposed of in the mortgage action.

MULOCK, C.J.Ex., and SUTHERLAND and LEITCH, JJ., agreed.

RIDDELL, J., was of opinion, for reasons stated in writing, that the judgment of MIDDLETON, J., should be affirmed with a slight variation.

Appeal allowed; RIDDELL, J., *dissenting.*

HIGH COURT DIVISION.

MIDDLETON, J. APRIL 6TH, 1914.

STUART v. TAYLOR.

Will — Construction — Devises — Estates for Life and in Remainder — Contingent Remainder upon Contingent Remainder—Rule against "Double Possibilities"—Intestacy as to Second Remainder—Right of Heirs of Testator, Ascertained at his Death—Improvements under Mistake of Title—Lien for—Alternative Retention of Lands on Payment of Value—Possession of Land—Title—Limitations Act—Partition.

Action for a declaration of the rights of the parties in regard to a parcel of land, for partition thereof, and for possession against the persons now in possession.

The action was tried without a jury at Sandwich on the 28th March.

J. H. Rodd, for the plaintiff.

A. R. Bartlet, for the defendant Taylor.

F. D. Davis, for the defendants Strong, Chevalier, and Duby.