

MIDDLETON, J., in a written judgment, said that the testatrix, by clause 5 of the will, directed that her "house on Simcoe street" is to be held by her trustees, to whom she has devised all her property, in trust for her husband during his life and after his death in trust for Jennie Baker, his daughter, for life, and upon her death to be conveyed to her grandchildren Marion, Stella, and Howard, or the survivors, as joint tenants. The will added: "The said Simcoe street house is more particularly described as follows;" then followed a description taken from the deed under which the testatrix obtained title, describing the property by metes and bounds, and giving a frontage on Simcoe street of 25 feet and a depth of 100 feet.

The will and codicil dealt with a number of other parcels in a similar way.

There was a residuary clause under which the residuary estate, real and personal, was to be sold and the proceeds divided among the children and grandchildren per capita.

Simcoe street being parallel to University avenue and distant 120 feet from it, the owner of a large block fronting on Simcoe street, without making any registered plan, sold portions of this land as lots fronting on Simcoe street, having a depth of 100 feet, thus leaving a strip of land between the rear of the land sold and University avenue, having the appearance of a lane; it was not described as a lane, and no rights over it were given in any of the conveyances. The parcel described in the will was the most southerly of these parcels sold, and south of it was a 20-foot strip running east from Simcoe street to University avenue, appearing to be a lane, affording access to the other strip of land and serving as a lane to lots fronting on Queen street. This was the situation on the ground when the testatrix bought in 1886.

Some time after this, the occupant of the land to the north of this property took possession of this 20 feet to the rear of his place, and built on it a house fronting on University avenue. This left the 20 feet to the rear of the testatrix's property useless; and, after the making of this will, and about a year before her death, she took possession of this land, and her son, who lived with her, built a garage on this small parcel, 20 x 25 feet.

Alexander Rogers, the husband of the testatrix, died on the 29th May, 1912, and the family then moved out of the premises. Some claim relating to the erection of the garage was then made by the son, but was adjusted by the executors by allowing him to remain in possession a short time rent free. Since then the executors had rented the house and the garage, sometimes as separate tenements, sometimes together, and had paid the rental to Mrs. Baker.