previous year, gave to his two sons, after a life estate to his wife, certain lands, *habendum* to his two sons "as tenants in common, their heirs and assigns forever, subject, however, to this proviso, that if either of my aforesaid sons should die without legitimate issue, his share as aforesaid shall revert to and become vested in the other son united with him in the aforesaid devise." One son died unmarried in 1843. The other son married and had children, and in 1847 sold the whole property and conveyed it as in fee simple to the purchaser, who failed to observe the provisions of the Act as to entails by registering his conveyance within six months:—

Held, that the devise was of a defeasible fee, which in the event became absolute in the surviving son. Although the words "die without issue" pointed to an indefinite failure of descendants, the context was sufficient to restrict the interpretation.

Roe d. Sheers v. *Jeffery*, 7 T. R. 589, and *Greenwood* v. *Verdon*, 1 K. & J. 74, followed.

Chadock v. *Cowley*, 3 Cro. Jac. 695, distinguished.

Little v. *Billings*, 27 Gr., at p. 357, commented on. *Van Tassel* v. *Frederick*, 646.

11. *Execution—Attesting Witnesses—Inability to Procure Proof by—Other Sufficient Evidence—Letters after Execution—Admissibility.*]—Where the Surrogate Judge is satisfied of the inability to furnish proof of the execution of a will by the attesting witnesses, it may be proved by other sufficient evidence.

A will in testator's handwriting and signed by him was found in a place where testator was accustomed to keep his papers, it being so signed in the presence of two persons, who signed as witnesses, the handwriting being apparently that of two persons and distinct from that of the testator, and who, though due search was made for them, could not be found, this being attributable to their being strangers, testator being under the belief, from the misreading of a text book on wills, that strangers were the best witnesses. The Surrogate Judge being satisfied as to the inability to procure proof by the witnesses, and that the due execution of the will had been proved by other evidence, admitted it to probate. On appeal to the Divisional Court the judgment was affirmed.

Per BOYD, C.—Where the will is itself in evidence with the testator's and witnesses' signature thereon, post-testamentary letters of the testator are receivable in evidence to enable the Court to come to a right conclusion. *Re Young*, 698.

WINDING-UP ACT

Clerks and Employees—R. S. C. ch. 129, sec. 56 — Auditor.] — *See* COMPANY, 1.

R. S. C. ch. 129—Action against Contributory — Bar to Action.] — *See* SCIRE FACIAS.

WORDS.

"*Action.*"]—*See* DIVISION COURTS, 3.

"*Cause.*"]—*See* DIVISION COURTS, 3.

"*Clerks and other persons in or having been in the employment of the Company in or about its business or trade.*"]—*See* COMPANY, 1.