

my beloved grandson Almanzer Robert Chatterson all that certain tract or parcel of land lying and being lot 3 in the second range of the township of Brantford, together with twenty-one acres, more or less, being rear part of number 2, conveyed to me by Daniel McDermid and his wife Margaret McDermid by deed bearing date the 15th of July 1847, whereon I now live, with all the appurtenances thereunto belonging, for and during his natural life, his heirs (if any) to inherit according to the present primogeniture law of Canada. If my said grandson should die without heirs of his body, then the aforementioned lands shall be divided between my beloved granddaughter Arrinthea Chatterson and the wife of Almanzer Chatterson if he should be married."

J. E. Jones, for executor and for applicant. The words "according to the present primogeniture law of Canada," may be rejected as having no meaning since 1852. The use of the words "without heirs of his body" excludes sec. 32 of the Wills Act, which defines the words "die without issue," because they are apt words to create an estate tail: Jarman on Wills, 5th ed., 1322; *Harris v. Davis*, 1 Coll. 416. The death was in 1876, and the will was made in 1872, and therefore sec. 32 does not apply in any case.

FALCONBRIDGE, C.J., held that the grandson took an estate tail.

Kelly & Porter, Simcoe, solicitors for executor.

Heyd & Livingston, Brantford, solicitors for A. R. Chatterson.

The other parties did not appear, though duly notified.

FALCONBRIDGE, C.J.

MARCH 29TH, 1902.

TRIAL.

NORTHMORE v. ABBOTT.

*Will—Action to Set Aside—Application for Probate—Withdrawal of Caveat—Burden of Proof—Want of Testamentary Capacity—Undue Influence.*

Action for a declaration that a certain document dated 8th August, 1894, purporting to be the last will of Hannah E. Fenwick, deceased, whereby the defendant was appointed executor, was not the true will of the deceased. The document had been admitted to probate and the defendant was in possession of the estate. The plaintiff, who was a sister of the deceased, alleged undue influence and want of testamentary capacity.