

HIGH COURT DIVISION.

LENNOX, J.

MAY 26TH, 1919.

RE McINTYRE.

Will—Construction—Devise—Description of Land by Lot and Concession without Mentioning Township—Proof by Affidavit to Supplement Description—Devise to Wife—Subsequent Clause in Will Disposing of Land in Event of Wife Dying without a Will—Estate of Wife—Power to Convey in Fee Simple—Will Made by Wife—Declaration as to.

Motion by Janet McIntyre, widow of Hugh McIntyre, upon originating notice, for an order declaring the applicant entitled in fee simple to land devised by her late husband and entitled to convey the same to a purchaser.

The motion was heard in the Weekly Court, London.

J. C. Elliott, for the applicant.

F. P. Betts, K.C., for the Official Guardian, representing the infant grandchildren of the testator.

LENNOX, J., in a written judgment, said that the testator, by his will, devised and bequeathed all his real and personal estate "in the manner following that is to say: to my beloved wife . . . my whole estate consisting of 100 acres more or less on concession 7 south half No. 2. . . . I also devise and bequeath that in the event of my wife . . . dying without a will the above real estate be equally divided among my youngest children," naming five of them.

The testator died on the 27th May, 1891, and probate of the will was granted to the executors named in it. The testator was survived by seven children, all of whom were dead at the time of this application. Five died unmarried and intestate; the other two were daughters, and they also died intestate, but each left a husband and a child or children. The children were infants. The debts of the testator had been paid and all the other provisions of the will complied with. The only matter remaining was the question of the construction of the will as to the real estate.

The will did not identify the land mentioned by township or county, but it purported to dispose of all the testator's real estate. The applicant's affidavit, although it referred to the township and county, did not say that "lot 2 in the 7th concession of the township of Moore" was the only real estate owned by the testator or