where there were several trails or roads across the west half of 18 to a private lane leading in a westerly direction past J. D.'s house to the 6th concession. The trails ran through bush land, and no one was used continuously or exclusively, but as was convenient. In 1860, J. D. conveyed the east-half of 19 to plaintiff, and plaintiff also acquired by devise from his father, who died in 1877, the north-east quarter of 18, which adjoined the east-half of 19 on the south. The west-half of 19 J. D. devised to his daughter who had ever since been in occupation thereof, and the north west-half of 18 to his son W. who was living with him at his death, who conveyed to defendant. Shortly after J. D. had conveyed the east-half of 19 to him, the plaintiff with J. D.'s permission cut a new roadway outside of the woods on lot 18, connecting thereby with the lane to the 6th concession. In 1877, by an agreement entered into between plaintiff and W. D., in consideration of certain privileges granted to W. D., W. D. covenanted to permit plaintiff to have a right of way along the said lane from the 6th concession and extending 40 rods east of the centre of the lot, so as allow plaintiff free communication from the lot 19 along said lane to the 6th concession.

Held, that there was no defined right of way existing in 1860, over the west-half of 18, appurtenant to the east-half 19 so as to enable plaintiff to claim an easement therein as granted under the words therefor in the conveyance of 1860, that the user of the roadway cut in 1860 being merely permissive, there was no prescriptive right thereto, but merely a license, which was revocable at any time, and was revoked by the father's death, and thereafter, as the evidence shewed, the user was regarded by W. as merely permissive, which was acceded to by the plaintiff in 1877 by his then entering into the agreement of that date.

Per MACMAHON, J.—The jury are to find specific questions of fact to which the Court must apply the law on the facts so found. The construction of the agreement was for the Court, and its meaning was that the old lane has to be extended easterly in a straight line for 40 rods. *Duncan* v. *Rogers*, 699.

WILL.

1. *Devise of land—Restraint on alienation—Invalidity of devise.*]—Testator devised as follows: "I also will that that portion of the within-mentioned lands which I have hereby bequeathed to my son William, to my son Robert, and to my son James, shall not be disposed of by them either by sale, by mortgage, or otherwise, except by will to their lawful heirs.

Held, that the condition imposed by the will was invalid, and that the plaintiff, one of the devisees, was entitled to hold the land freed from the restrictions above mentioned. *Heddlestone* v. *Heddlestone*, 280.

2. *Devise — Estate limited "to heirs but not assigns"—Fee simple—Vendor and Purchaser Act—R. S. O. ch. 109, (1877.)*]—A devise in a will was as follows: "I also will, devise, and bequeath to my daughter L. A. the land and premises on which she now lives, and being all the land in said locality now owned by me, to her and her heirs, but not to their assigns." L. A. married and had issue. In an application under the Vendor and Purchaser Act,