Two questions were left open, and were now disposed of by the judgment of the Court (MEREDITH, C.J.O., MACLAREN and MAGEE, JJ.A., and LEITCH, J.), delivered by MEREDITH, C.J.O.:—

This case was heard before us on the 7th November, 1913, and we gave judgment on the main points, on the 17th November, 1913 (29 O.L.R. 534), but we left open two questions: the one as to costs, and the other as to whether the appellant should be ordered to convey to the respondent the water lot which he contended was held by him as trustee for his children, although it stands in his own name.

The Court suggested to the parties that "the proper course to be taken in the circumstances is either to direct an inquiry into the title of the water lot, or to retain the action for six months in order to enable the remaindermen, if so advised, to take steps to establish their right."

Neither party desired to do anything, apparently wishing that judgment be given, when they will shape their course as they may be advised.

We think that the judgment must order the conveyance of the water lot. It is true that the appellant sets up that he is a trustee for his children. Of course, if the action were between himself and his children that would be conclusive, but in this action it has not that effect.

I should have mentioned that the number of the lot is 97, and the water lot is in front of it, on the Detroit river.

The appellant, believing himself to be the owner of the land, under the will of his father, made a lease to the respondent, for a term of years, giving the respondent an option to buy at the expiration of the term. The respondent exercised the option, and, in litigation which subsequently took place, it was determined that the appellant was not owner in fee of the land, and that under the will he was only tenant for life, and on his death the property went to the children. Judgment has, therefore, gone for specific performance, with compensation in respect of the interest which the appellant is not in a position to convey.

Then with regard to the water lot, the facts appear to be that the practice of the Crown Lands Department is to sell the water lot to the owner of the adjoining land; that the appellant, believing himself to be, under his father's will, the owner in fee of lot No. 97, applied for a patent of water lot in front of 97: that he laid before the Department of Crown Lands an abstract of title, and subsequently furnished to the Department an extract from the will, containing the devise under which it was assumed