

DISENTAILING DEED—PROTECTOR OF SETTLEMENT—LEGAL ESTATE
IN TRUSTEE—VOID TRUST FOR ACCUMULATION—BENEFICIAL
OWNER—HEIR—FINES AND RECOVERIES ACT, 1833 (3 & 4
WM. IV. c. 74) ss. 22, 27—(R.S.O. c. —, ss. 23, 15)—
THELLUSSON ACT (39 & 40 GEO. III. c. 98) s. 1—(R.S.O.
c. 332, s. 2).

In re Hughes and London and North Western Ry. Act
(1906) 2 Ch. 642. This was a petition for the purpose of obtaining
a declaration of the Court that a disentailing deed affecting
moneys in Court was effectual to bar the entail absolutely. The
question turned on whether or not there was a protector of the
settlement. The entail had been created by will whereby the
testator who died 3 April, 1854, devised the land in question to
three trustees during the lives of 3 persons and the survivor of
them to pay certain annuities and accumulate the surplus rents
and profits and hold them for the trusts therein mentioned. In
1879, and after the termination of the trust estate the testator
devised the land to his grandson in entail, the Court by
order declared that the trust for accumulation after 3 April,
1875, was void under the Thellusson Act, s. 1 (R.S.O. c. 332,
s. 2), and that thereafter the heir at law was entitled beneficially
to the surplus rents and profits. The land in question having
been expropriated by a railway the purchase money was paid
into Court, and in July 1875, the tenant in tail executed a
disentailing deed of the land and the purchase money, and in
this deed the surviving trustee of the will joined as protector
of the settlement. In these circumstances Eady, J., held that
the entail had been effectually barred, and that there was in
fact no protector of the settlement, because the trustees under
the settlement from and after the 3 April, 1875, became bare
trustees of the inheritance, and as such could not be protector
under the Fines and Recoveries Act, s. 27, (R.S.O. c. 122, s.
15), and that the heir at law who was beneficially entitled was
also, by the same section, precluded from being protector.