of my son John Elgin Hutt taking place before the decease of my son George Alonzo, then my son George Alonzo may sell said 100 acres as and to whom he pleases or bequeath the same to whom he wills."

The main, and indeed it may almost be said the only, question is as to whether the provisions with regard to the disposition of the land by George Alonzo Hutt are valid restrictions or whether they are void as repugnant to the gift of the fee.

Another question was raised and discussed at the trial, as to whether the title to the land ever vested in interest in George Alonzo Hutt. But, when the provisions are carefully examined, there seems to be no question that, notwithstanding the somewhat confused directions as to possession, there is nothing to prevent the vesting of the estate in interest, and no condition or limitation sufficient or effectual to divest that estate at any subsequent period, unless the restriction on alienation imposes one.

And on the argument in appeal it was virtually conceded that the sole question was as to the validity of the provisions in restraint of alienation.

The plaintiff's contention is, that the restraint is only partial and not unreasonable; and that, having regard to the decisions of the Courts of this Province, founded upon and adopting the principles enunciated by Sir George Jessel, M.R., in In re Macleay, L.R. 20 Eq. 186, it is valid and operative to prevent George Alonzo Hutt from selling the land to any one but the plaintiff during his lifetime.

The defendant, on the other hand, contends that, having regard to the decision of Pearson, J., in In re Rosher, 26 Ch. D. 801, and of the Supreme Court of Canada in Blackburn v. McCallum, 33 S.C.R. 65, the restriction as to alienation is void as repugnant to the gift in fee.

The effect of the provisions of the will is to impose upon the devisee a condition which, in substance, prevented him from selling the land to any one but the plaintiff during his lifetime or disposing of it by will to any one unless he survived the plaintiff. In other words, it was, having regard to the evidence as to the actual value of the farm, an absolute restraint against disposal during the plaintiff's life. A provision having a similar effect was held by Pearson, J., in In re Rosher, supra, to be void.

. . . .

In perusing the numerous decisions which appear in the reports relating to the question, one is much inclined to sympathise with, if not entirely to coincide in, the regret expressed by Pearson, J. (In re Rosher, p. 814), and repeated by Meredith,