This is not a memorial of the will. Had it been, it would have required the affidavit of one of the witnesses to the will before it could be registered. The words "a memorial to be registered," etc., are merely surplusage. . . .

There was produced at the trial from the registry office of Halton a copy of the certificate of the Judge of the County Court of Halton, dated 29th November, 1880, similar in effect to the certificate above quoted. Attached to this certificate is a copy of the will, to which is attached an affidavit of one Knowles stating that he had compared the copy intended to be deposited in the registry office with the original will, and that it was a true copy. . . .

The widow of Smith Bawtinheimer said that her husband told her he owned the farm, and had registered the will in Milton; that the will was kept by her husband in a desk, and it was there at the time of his death; and five years after he died she was sorting some letters and papers in the desk, and, thinking the will was of no more use, had burned it.

The witnesses to the will being dead long prior to the year 1880, the only way in which Smith Bawtinheimer could secure registration thereof was under sec. 47 of the then Registration Act, R. S. O. 1877 ch. 111. . . .

When this will was registered in Milton on the 29th November, 1880, the Act R. S. O. 1877 ch. 111, sec. 63, required that every will should be registered at full length by the production of the original will and the deposit of a copy thereof with an affidavit sworn to by one of the witnesses to the will proving the due execution thereof by the testator, etc.

The plaintiff gave notice under sec. 41 of the Evidence Act, R. S. O. 1897 ch. 73, that he intended to give in evidence as proof of the devise to Smith Bawtinheimer, the letters of administration with a copy of the will annexed. . . . The letters of administration were not issued until the 29th November, 1902; the will and codicil had been destroyed in 1899; the letters recite their destruction and that copies had been presented to the Surrogate Court.

[Reference to Sugden v. Lord St. Leonards, 1 P. D. 154; Baxendale v. DeValmar, 57 L. T. N. S. 556; Fairfield v. Morgan, 2 B. & P. (N. R.) 38; Wright v. Marson, 44 Sol. J. 67; Hauer v. Sheetz, 2 Binn. (Pa.) 537; Doe d. Forsythe v. Quackenbush, 10 U. C. R. 148.]

The present case is, I consider, governed by the authorities to which I have referred, and I hold that the word "or" must be read "and," and the double event of Smith Bawtinheimer dying before the age of 21 years and without lawful children,