

The plaintiffs were the executors of the will of the late Samuel Haight. Among the assets of the estate was a mortgage made by Arthur Eugene Dangerfield and Richard Dangerfield, two sons of the late James Dangerfield, under whose will the two sons took their interest. The mortgage purported to convey certain lands in fee simple to the testator, James Haight, and the defendants alleged that all they took under the will of James Dangerfield was an estate for life. The action was brought by the plaintiffs for the sale of the mortgaged premises, for judgment against the mortgagors on their covenant for payment, for immediate possession, and for a declaration of the construction of the will of James Dangerfield. The trial Judge dismissed the action, except as to the mortgage, upon which he gave judgment for possession, an account, and payment. The plaintiffs appealed, seeking further relief.

J. Bicknell, K.C., and G. C. Thompson, Hamilton, for appellants.

W. H. Barnum, Dutton, for adult defendants.

F. W. Harcourt, for infant defendants.

The judgment of the Court (BOYD, C., FALCONBRIDGE, C.J.) was delivered by

BOYD, C.—By the terms of the will a point of time was fixed for the sale of the land and distribution of the proceeds of sale. That is, at the time when the life estate given to the two sons—to last as provided by the testator during the life of the longest lived of the two—has come to an end by the death of both sons. At that time the corpus of the land is to be sold and the proceeds of each share (i.e., presumably, a moiety) shall be equally divided and given unto their respective lawful heirs then surviving them, share and share alike. This plainly points to the ascertainment of the persons to share beneficially in the moneys arising from the sale at a time fixed as at (i.e., after) the decease of both the sons. The persons found to be the lawful heirs of each son are entitled to one-half the proceeds to be divided among them share and share alike. This has the effect of limiting the sons' estate to one for life or their joint lives, and to something less than an estate in fee or in tail. The nature of the estate under the mortgage will depend on the state of affairs as to family at the death of the son who first dies. But upon the death of both sons the corpus falls to be sold and divided as directed. Having regard to *Evans v. Evans*, [1892] 2 Ch. 173, the estate in the land is to be defined as a life estate for the joint lives of the two sons, the first takers