

Grant v. Fuller (1902) 33 S.C.R. 34, and *Chandler v. Gibson* (1901) 2 O.L.R. 442, followed.

Held, also, that the devise to the children of G. was a gift to a class, which would comprise all children coming into existence before the period of distribution.

G. had married and had children living and his wife had died at the time of an application under the Vendors and Purchasers Act, he having contracted to sell the land.

Held, that if he married again, his second or any future wife who survived him would be entitled to a life estate.

Title could not be made without the order of the Court.

A. H. Clarke, K.C., for both vendor and purchaser.

Mulock, C.J. Ex.D., Anglin, J., Clute, J.]

[Nov. 23, 1906.]

ANDERSON v. NOBELS EXPLOSIVE CO.

*Writ of summons—Service out of jurisdiction—Rule 162(e)—
Tort committed within Ontario.*

It is only where the tort for which the plaintiff brings action has been "committed" within Ontario, that Con. Rule 162(e) entitles him to ask the Court to entertain an action against a non-resident defendant who is to be served with process abroad.

An order permitting service upon the defendants abroad was set aside where the cause of action alleged against the defendants, a company engaged in the manufacture of explosives in Scotland, was that they were negligent in allowing a fuse, which has been purchased by the plaintiff's employers, and which injured the plaintiff at a place in Ontario, to be manufactured and sold in a defective condition, the manner in which the fuse reached the plaintiff's employers not being alleged or suggested. The manufacture and sale must be deemed to have taken place in Scotland, and, although the invasion of the plaintiff's right of personal security occurred in Ontario, the tort comprises also the wrongful act or omission of the alleged tort-feasor.

Orders of the Master in Chambers and of MABEE, J., affirmed.

Phelan, for plaintiff. W. H. Blake, K.C., for defendants.