

Another portion of the land, which may be called land "B.," not conveyed by the quit claim to the widow, also comes into the possession of defendant through mesne conveyances: Mrs. Burrows to Mrs. Andrews, 13th April, 1889; Mrs. Andrews to John J. Nichols, 13th May, 1889; and John J. Nichols to defendant, 8th February, 1890.

Defendant has been in possession since the conveyances to him.

Mrs. Burrows died on 11th September, 1896. This action was brought 6th March, 1906, by one of those (as is admitted) who are called "minor children" in the will of John Burrows.

All technical difficulties, if there are any, as to parties, are expressly waived, and the whole question for determination is the power of the widow to convey as she did.

No oral evidence was given, nor any evidence other than the documents already spoken of, the patent from the Crown to John Burrows, and the probate of the will of the widow, which will simply give "all my freehold property, my leasehold property, my personal property, and all claims of every kind thereto or therein to my dear children named—" the plaintiff, Mrs. Andrews, and another.

Confining my attention for the present to land "A.," I assume in favour of plaintiff that if the conveyance by his mother could not carry the fee, he is entitled to some interest in the land in question. If the will operates as an appointment or disposition by her, authorized by the will of John Burrows, he takes as an appointee; as to which see *Deedes v. Graham*, 16 Gr. 167; *Rogerson v. Campbell*, 10 O. L. R. 748, 6 O. W. R. 617. And, if not, the general interest may be effective, in the absence of appointment; as to which see *Burrough v. Philcox*, 5 My. & Cr. 72, 92; *McPhail v. McIntosh*, 14 O. R. 312, and cases cited. If there be an intestacy, he may claim as being of the heirs-at-law of John Burrows. Quacunque via, the plaintiff would have rights in the land. Indeed Mr. May candidly admitted this, and agreed that everything depends upon the interpretation of the will of John Burrows.

The will and codicil, as it seems to me, contain in effect a devise to the wife for life with power to the executors to sell with the consent of the wife, paying in case of a sale the proceeds into the bank to the credit of the wife for her to draw upon—but if such sale be not deemed advisable, the