

MEREDITH, J.A., agreed in the result, for reasons stated in writing.

GARROW, MACLAREN, and MAGEE, JJ.A., also concurred.

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OCTOBER 24TH, 1911.

\*HUTT v. HUTT.

*Will—Devise—Vested Estate in Interest—Restraint on Alienation—Repugnancy—Invalidity.*

An appeal by the plaintiff from an order of a Divisional Court of the 7th March, 1911, dismissing the plaintiff's appeal from the judgment of MIDDLETON, J., at the trial, whereby the action, which was brought to recover possession of land, was dismissed.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, JJ.A.

E. D. Armour, K.C., and W. A. Proudfoot, for the plaintiff.

I. Hilliard, K.C., for the defendant.

MOSS, C.J.O.:—This action is brought by a son of John B. Hutt, deceased, to recover possession from the defendant, who is a grandson of John B. Hutt, of a parcel of land described as the west half of lot 8 in the 6th concession of the township of Winchester, in the county of Dundas.

Both parties claim to derive title from or through one George Alonzo Hutt, a son of John B. Hutt; and their respective rights depend upon the effect of a devise of the lands, contained in the will of John B. Hutt, in the following terms: "I give and bequeath to my son George Alonzo Hutt the west half of lot number 8 in the 6th concession of the township of Winchester, containing by admeasurement 100 acres more or less, to be given him in possession at the time or immediately after his marriage or in the event of his marriage not having taken place, and his brother John Elgin Hutt be deceased, then to be taken into possession at once, said described 100 acres to be not sold by my son George Alonzo Hutt to any other person than to my son John Elgin Hutt for the sum of \$1,400. In the event of the decease

\*To be reported in the Ontario Law Reports.