

let or rented, the rentage to be applied for the use of the family until my said son shall arrive at the full age of 21 years, when he shall be put into possession of said farm." The testator charged this farm with certain legacies to his daughters, and he made provision for a third son, James, the plaintiff. He then provided that "should any of my sons die before becoming of age or without having lawful children, in any of these cases the property bequeathed to such shall be equally divided betwixt the surviving sons," etc. Smith Bawtinheimer entered into possession of the farm devised to him in April, 1857, and attained his majority in June of that year. He was married in 1861, and died in 1894, without leaving any children. He occupied the farm until 1864, when he leased it. On 1st December, 1881, he sold and conveyed the farm to defendant Sealey for \$5,000. Sealey stated that during the 17 years he owned it, he made permanent improvements to the value of about \$2,000. Sealey sold and conveyed to defendant Miller in February, 1899, for \$4,000.

After the death of Smith neither of the brothers made any claim to the farm until 1901. On 3rd October, 1901, Levi quitted claim in the 100 acres to James, who thereupon brought this action.

G. F. Shepley, K.C., and G. F. Mahon, Woodstock, for plaintiff.

E. D. Armour, K.C., and W. T. Evans, Hamilton, for defendant Sealey.

W. W. Osborne, Hamilton, for defendant Miller.

MACMAHON, J.—There was produced by plaintiff at the trial, from the registry office of Brant, a copy of what was called "a memorial to be registered pursuant to the statutes in that behalf of a will written in words following." Then follows a verbatim copy of the will of James M. Bawtinheimer. There is attached to this copy of the will a copy of a certificate of the Judge of the County Court of Brant, dated 4th October, 1876, "that I am satisfied from the proof adduced by Levi Bawtinheimer, being the evidence of Thomas Turnbull . . . who states under oath that he knew the above named testator and the witnesses respectively of the above will . . . and the handwriting of the said testator and the said witnesses respectively, and that the signatures of the said testator and of the said witnesses are the proper handwriting of the parties respectively, and that the testator and the said witnesses are all dead, with the due execution of the above will and codicil; the said Levi Bawtinheimer being a devisee under the said will." . . . The will was not registered till 8th June, 1880.