

subsequent part of the same will (para. 16) he directed, that should *John Watson Macdonell* prefer to take possession of lot No. 32, then lot No. 37 was to become vested in *Alexander Roderick*, the same as if it had been willed to him. By a codicil to this will, dated on the 1st of April following, the testator declared his will and desire to be that his son *Allan* should take holy orders, but should *Allan's* health or any other reasonable cause or circumstances cause him not to enter into holy orders, he ordered and devised that *Allan* should have to himself, and his heirs for ever, the whole of the said lot No. 37, in which case *John Watson* and *Alexander Roderick* were ordered to receive certain other lands particularly mentioned, adding in a subsequent clause of the codicil, "*But should my son Allan not divide or give over in full an equal portion of the house in St. Paul street, Montreal, as was his mother's intention, as appears by her last will, in which case I order and devise, that my son Allan shall only receive of my property what has been willed to him in my last will, before this will was written, then this codicil to be null and void; otherwise to remain in full force and virtue.*" After the death of the testator, *Allan*, not having taken holy orders, entered into possession of No. 37, and also into the receipt of the rents and profits of the property in Montreal devised by his mother, treating it as his own absolutely, never having made any conveyance of any portion thereof or paid any share of the rents and profits to his sisters and brother, and having also executed a mortgage thereon, as owner in fee, for his own benefit. *John Watson Macdonell* had after his father's death chosen to take as his share lot No. 32, and thereupon *Alexander Roderick Macdonell*, claiming that under the terms of the codicil he had become absolutely entitled to lot 37, brought ejectment therefor. It was shewn that by the law of Lower Canada, the words of the will of Mrs. *Macdonell* vested in the sisters and brother absolute interests in the property in Montreal, and that no conveyance or assignment by *Allan Macdonell* was necessary to vest their portions of the estate in them.

*Held*, reversing the judgment of the court below, that the event upon which the estate was to become divested from *Allan* and to devolve upon the plaintiff had not happened: or, in other words, that the condition upon which *Allan* held the estate had not been broken.

[*Esten*, V. C., dissenting.]

McDonald v. McDonell, 343.