The devise to the son does not stand alone. It is preceded by the intermediate interests of the executors and the widow and affected by the devise to the daughter had she survived her brother: see Francis v. Francis, [1905] 2 Ch., where the authorities are collected and discussed.

I therefore regard the devise to the son as vested and not contingent. Upon his death—his sister having predeceased him—his mother, as his sole heir, became entitled to his interest. There will be judgment accordingly.

The costs of this application are to be paid by the estate.

BOYD, C. FEBRUARY 1ST, 1910

RE BUCKLEY.

Will—Devise to Two as Tenants in Common in Fee—Restriction upon Incumbering during Lives—Validity—Restriction upon Alienation except the One to the Other—Invalidity.

Appeal by Nicholas Buckley, petitioner, from the refusal of the Referee of Titles under the Quieting Titles Act to give the petitioner a certificate of title in fee to certain land under a will, free from the restrictions imposed by the will.

M. Lockhart Gordon, for the appellant.

J. R. Meredith, for infants and all persons interested in opposing the petition.

BOYD, C.:—The testator gives land to two grandchildren, John and Nicholas, "to have and to hold unto them, their heirs and assigns, as tenants in common forever;" "without power to incumber the same during the lifetime of said John and Nicholas," but with the "power of disposing of the right, title, and interest of the one to the other, but to no other person whomsoever."

Nicholas has bought John's share, and now seeks to quiet the title. The clause forbidding incumbering during the lifetime of John and Nicholas is valid as a competent restriction, and will apply to the land when in the sole ownership of Nicholas.

The other clause forbidding disposing of the land except from the one to the other appears to be legally inoperative. "Dispose" is the largest possible term as to dealing with the land, covering sale, lease, mortgage, or testamentary disposition. According to