

The sole question is, do the words, "my real estate in the township of Cornwall," include the real estate sold to Conliff?

I am of opinion that they do not. This farm was not, at the time of making the will, or at the time of the testator's death, his real estate, within the meaning of these words. The words "real estate" do not, as a general thing, include leasehold—nor do they include the beneficial interest which a mortgagee has. In this case the testator had his interest limited to the unpaid purchase-money—what the testator intended to indicate as the real estate he devised to his son is shewn by mentioning the chattels upon the farms, and mentioning by description one parcel. The distinction between purchase-money for land and the land itself is clearly maintained in all cases of ademption. See *In re Clowes*, [1893] 1 Ch. 214; *Re Dods*, 1 O.L.R. 7; *Ross v. Ross*, 20 Gr. 203.

It was held in *Leach v. Jay*, 6 Ch.D. 496, that the words "real estate of which I may die seized" did not pass lands which, at the time of the testator's death, were in the wrongful possession of a stranger. The fair inference from the reasoning in that case is, that the words "real estate" would not pass lands which, at the time of the testator's death, were in the rightful possession of a purchaser, even if all the purchase-money was not paid.

The order will go construing the will of the said John Goodall Snetsinger in this way, that the clause devising all the real estate of the deceased in the township of Cornwall did not pass that portion of the east half of lot number 22 in the 4th concession, 5th range, of the township of Cornwall, in the county of Stormont, lying north of the Ottawa and New York Railway, crossing said east half of said lot.

Costs of all parties out of the estate—costs of executors between solicitor and client.

BRITTON, J.

JULY 2ND, 1912.

RE JOHNSON.

*Will—Construction—"Survivor"—Period of Ascertainment—Death of Testator.*

Motion by Eliza Blackwood, executrix of the will of Margaret J. Johnson, deceased, the mother of John Roger Johnson, deceased, and one of the devisees named in his will, upon an originating notice under Con. Rule 938, for an order determining a question as to the construction of his will.

The motion was heard at Cornwall.