

the use of the farm. As already stated, the defendant was on the farm with his brother David, and both so continued after the father's death—then David died, and the defendant kept on alone till he took the first lease.

The testator gave directions about "the mare": "I wish her to remain on the farm with her mate which is the property of my son Robert both to be worked on the farm and not on any excuse to be disposed of and when my son Robert comes to reside he shall have her for his own use."

There is also this clause: "I hope and request that my son Robert will not on any account dispose of the farm as it is my earnest desire that it may remain in the family as long as there is one of the name."

In the Oxford Dictionary "reside" is defined: (1) To settle: to take one's abode or station. (3) To dwell permanently or for a considerable time: to have one's settled or usual abode: to live in or at a particular place.

"Reside" is used by the testator with the ordinary meaning which comes first to the mind. His eldest son was living at a distance: he wished him to come back to the farm and live there as his settled place of abode, and his idea was that this personal occupation should be kept up in the family as long as one of the name should exist. The last is, of course, an illegal restriction, but I see no objection to the direction that, pending the personal coming of Robert to live on and work the farm, the right to go upon it and use it should fall to David and Angus or the survivor.

I rather think that no estoppel exists, in these circumstances, to disable the defendant from shewing that he is in possession now under the sanction of the will, and not as an overholding tenant. He took the leases in ignorance of the tenor of the will in regard to his use of the place while Robert was residentially absent: when he came to know this provision, his attitude as to paying out changed, though he was willing to pay at the same rate for the maintenance of his brother.

The plaintiff was in possession under the father and by virtue of the provision in the father's will before any lease was taken from the brother, and the motive for taking that lease was to give him a less precarious footing, on his marriage, in the occupation of the farm, than he would otherwise have had. When the leases terminated, and his right of user in the absence of his brother from the farm became known to him, he then was in a position to elect whether to lease again or to occupy as under the father's will. This appears to me to be the