

6 May, 1895.

Ontario.]

## BARTHEL V. SCOTTEN.

*Deed conveying land — Description — Patent ambiguity — Legal maxims—Res magis valeat quam pereat—Verba fortius accipiuntur contra proferentem—Intention of parties*

Land was conveyed by the following description:—"All that certain tract or parcel of land situate, etc., being part of lot 43 ..... commencing in the southerly limit of said lot 43, at a distance of 20 feet from the water's edge of the Detroit River, thence northerly parallel to the water's edge 208 feet, thence westerly parallel to the said southerly limit 600 feet, more or less, to the channel bank of the Detroit River, thence southerly following the channel bank 208 feet, thence easterly 600 feet more or less to the place of beginning." In an action of ejectment for land alleged to be covered by this description, in which the point of commencement was difficult to ascertain:—

*Held*, reversing the decision of the Court of Appeal (21 Ont. App. R. 569), King, J., dissenting, that the construction of the description did not depend upon the terms of the patent of said lot 43; that it must be construed by the terms of the instrument alone read in the light of surrounding circumstances tending to explain it, even if such construction should make the grantor purport to convey more than he had title to; that the maxim *res magis valeat quam pereat* does not authorize a construction contrary to the plain intention of the parties; and that the maxim *verba fortius accipiuntur contra proferentem* cannot be applied to explain away a patent ambiguity.

Appeal allowed with costs.

*Armour, Q.C.*, for the appellants.

*McCarthy, Q.C.*, and *Nesbitt*, for the respondent.

6 May, 1895.

## KING V. EVANS.

ONTARIO.]

*Mill—Construction of devise—Devise for life, remainder to issue "to hold in fee simple"—Rule in Shelley's case—Intention of testator.*

A testator by the third clause of his will devised land as