

On this evidence and on this record, Duby should have a judgment dismissing this action as against him; and that is all he asks now. The judgment should be varied accordingly, and Duby have his costs here and below.

This, however, should not be considered final in all respects. Some of the facts we have from statements of counsel, and some are not wholly clear except with the admissions of counsel. So, while all parties interested will probably be willing to leave Duby's strip out of the partition proceedings, any one not a party to this record should, if he alleges the facts as being different from what appears above, be allowed by the Master, at his own peril as to costs, to bring Duby into the partition proceedings.

Chevalier is in the same position as to title. . . . I think the same order should be made in his case as in Duby's.

These two argue that the partition made by the three sons of Pierre Charron should be declared binding on all parties. The argument that such act creates an estoppel as against these trespassers savours of absurdity. The essence of an estoppel in pais is an act or word done or said with the intent that it shall be acted upon by him claiming the benefit of an estoppel; and it will scarcely be contended that these three brothers divided up their lands so that some one should trespass on them.

I do not think it matters to these defendants whether the representatives of these three were bound by their partition; but in any event, as has been said, it could not last beyond the life-tenancies.

Strong stands in quite a different position. He has all that Gilbert and his children could give him. He is rightly a party to the partition; and whether there can be anything in the way of an estoppel will be threshed out in the Master's office when all the facts are known. The case cannot be dismissed as against him—the only declaration made being as to the effect of the will at the time of the death of Pierre. Evidence can be taken by the Master on anything shewing or tending to shew any transaction dehors the will, estoppel, descent, conveyance, and everything material to determine the present title to the land.

Taylor is the assignee of Joseph Sharon and is in the same position, and his appeal should be dismissed also. He, too, will have a chance to shew in the Master's office any right, claim, or title he may have.

Emily A. Sharon can have nothing to complain of, so far as the judgment is concerned. She claims a share in the estate