

for an order declaring that an objection to the title to lands contracted to be sold to George A. Winters, viz., that by the will of Ann Dunn the lands were so insufficiently described as not to vest the same, and the whole thereof, in the devisees therein named, had been satisfactorily answered by the vendor, and was not a valid objection.

In the contract the lands were described as "the premises situate on the east side of Yonge street, in the city of Toronto, known as street No. 1101, having a frontage of about 24½ feet more or less by a depth of about 100 feet more or less."

By the will of Ann Dunn she devised to her executors "lots Nos. 47 and 48 on the east side of Yonge street . . . to have and to hold the said lands and premises, together with the houses and buildings upon them, upon the following trusts, that is to say: (1) Upon trust to sell the northern half of said lands together with the house and buildings upon the same. . . . (2) Upon trust to let the remaining house from year to year . . . until the death of my husband John Dunn. (3) Upon trust, so soon after the death of my husband John Dunn as they may see fit, to sell the lands and premises aforesaid, namely, the northern half of the property hereinbefore described. . . ."

The affidavit of the petitioner stated that the only lands owned by Ann Dunn at the time of her death were the two houses on the east side of Yonge street, Nos. 1101 and 1103; that the property described in the 2nd and 3rd trusts of the will was house No. 1101; that since the death of the testatrix (in 1888) the petitioner and his co-executor had been in constant possession of houses 1101 and 1103; that house No. 1101 was, in fact, built partly upon the northerly 10 feet of lot 49, and partly upon lot 48; that lots 47 and 48 were conveyed to the testatrix on 23rd December, 1869, and the northerly 10 feet of lot 49 were conveyed to her on 11th May, 1877; that the petitioner's co-executor died more than 10 years before this application, and that John Dunn was dead also.

Casey Wood, for petitioner.

J. T. Loftus, for purchaser.

FALCONBRIDGE, C.J.—The will operates as a devise of the two houses, and, as the southerly house is partly erected on lot 49, it involves a devise of the portion of lot 49 included in the premises 1101 Yonge street.