

HON. MR. JUSTICE KELLY.

JUNE 7TH, 1912.

## RE COUTTS &amp; LEBOEUF.

3 O. W. N.

*Vendor and Purchaser—Title—Will—Wrong Description of Lands—  
Valid Title Passed under Will.*

Application under Vendor and Purchasers Act to determine whether certain lands passed under a devise made by one Alexander Coutts, deceased. The testator had devised "the north half of the south half of lot 11 in the fifth concession of the township of Tilbury East," whereas the only land he owned not disposed of by other devises was the north half of the north half of the said lot 11.

KELLY, J., held that the latter parcel passed under the devise, and the vendor could make a valid title.

*Re Harkin*, 7 O. W. R. 840;

*Re Clement*, 22 O. L. R. 121; and

*Smith v. Smith*, 22 O. L. R. 127, followed.

An application under the Vendors and Purchasers Act.

Jane Coutts, claiming to be devisee under the will of her husband, Alexander Coutts, of the north half of the north half of lot 11 in the 5th concession of the township of Tilbury East, in the county of Kent, agreed in February, 1910, to sell these lands to Eugene Leboeuf; the purchaser objected to the title on the ground that the property was not devised or disposed of by Alexander Coutts and did not pass by his will, and that he died intestate as to it, and that therefore the vendor had no power to sell it.

Alexander Coutts made his will on 17th April, 1875, and died August 14th, 1881. His wife, Jane Coutts, was appointed the executrix, and probate of the will was issued to her.

The first paragraph of the will was:

"I give, devise and bequeath all my lands and tenements, goods and chattels as follows:" Then, after devising to his son the south half of the north half of lot 11 in the 5th concession of Tilbury East, containing 50 acres more or less, and other lands, he devised to his wife, Jane Coutts, the vendor, for the benefit of his family, several parcels, including "the north half of the south half of lot No. 11 in the 5th concession, containing 50 acres more or less," and he did "also enjoin her to sell any portion or parcel of the lands willed to her at any time she may see fit or judicious."

At the time the will was made, and also at the time of his death, testator was the owner of the north half of lot 11 in the 5th concession of Tilbury East, but was not then