

retainer to solicitors to take proceedings to stop the infringement of the patent, and the solicitors, not knowing that he was an infant, brought an action for that purpose, using his name as a plaintiff, without a next friend. The action was prosecuted for a time, with the result that the infringement ceased, but it was subsequently dismissed, with costs against the plaintiffs, for want of prosecution. More than a year after he became of age, he moved to set aside all proceedings in the action.

*Held*, that, under the circumstances mentioned, he was not entitled to relief on the ground of infancy.

*Rowell* for the plaintiff, Frank Wright.

*Hoyle*, Q.C., for Daniel McAlpine.

*Tremear* for the solicitors.

FERGUSON, J.]

[April 27.]

IN RE BAIN AND LESLIE.

*Will—Devise—Falsa demonstratio—Deed of release—Recital—Estoppel—Title to land—Statute of Limitations.*

A testator by his will devised to his son G. "the property I may die possessed of in the village of M. also lot 28 in the 10th concession of B." In the early part of the will he had used the words, "Wishing to dispose of my worldly property." The testator did not own lot 28, and the only land he did own in the 10th concession of B. was a part of lot 29. The will contained no residuary devise.

Upon a petition under the Vendor and Purchaser Act;

*Held*, that the part of lot 29 owned by the testator did not pass by the will to the son.

After the death of the testator all his children executed a deed of release to the executors of his will, containing a recital that the part of lot 29 owned by the testator was devised to the son G., and that he was then in possession.

*Held*, that there was no estoppel as among the members of the family, who together constituted one party to the deed.

*Held*, however, upon the evidence, that G. had acquired a good title to the lands in question by virtue of the Statute of Limitations.

*Begue* for the vendor.

*G. W. Field* for the purchaser.

*Practice.*

OSLER, J.A.]

[May 8.]

PICKERING v. TORONTO RAILWAY CO.

*Appeal to Court of Appeal—Dismissal—Cross-appeal—Right to retain—Rule 821.*

A proceeding under Rule 821 by way of cross-appeal, taken by the respondent to an appeal to the Court of Appeal, is a mere branch or offshoot of the main appeal; and if the respondent chooses to dismiss the main appeal for want of prosecution, he cannot retain such cross-appeal for any purpose.