

BOYD, C.—The scheme of the will (which is home-made) appears to be this, that the land is to be rented by the executors until the youngest son comes of age, unless with the sanction of the adult children named the executors sooner sell the property “at good advantage.” When the youngest child is 21, the property is to be valued and certain options to purchase given to the children. And lastly power of sale is given to the executors for the purpose of distribution as mentioned in the will. That is substantially a trust for sale of the land, but not till the youngest child is of age, unless it is sooner sold with the sanction of the adult children named.

A devise of land in trust to permit occupation during life or widowhood of testator’s wife and then to sell, has been held to be a limitation “by way of succession” within the Settled Estates Act: *Carlyon v. Truscott*, L. R. 20 Eq. 348. See R. S. O. 1897 ch. 71, sec. 2 (1). And in a case where the trustees were to receive the rents during the minority of any of the children, and during that time the children were not to be entitled to the beneficial interest in possession, but on the youngest child attaining 21 they were to get possession, it was held by Malins, V.-C., in *Re Shepherd’s Estate*, L. R. 8 Eq. 572, that this was limited by way of succession within the beneficial scope of the statute.

With some hesitation, I think this case may be regarded as falling within the scope of the Settled Estates Act. The purchaser is a willing one, and will be protected by secs. 39 and 40 of the Act. See *Micklethwaite v. Micklethwaite*, 4 C. B. N. S. at p. 858, defining “settled estate;” *Re Hooper*, 28 O. R. 179; *Re Laing’s Trusts*, L. R. 1 Eq. 416.

A good case is made for realizing money from the property by the sale of the whole, in view of the increased taxation, the disrepair of the houses, and the inability to make sufficient outlay from the funds of the estate.

The terms of the will contemplate a sale for the purpose of distribution in the future; even an accelerated sale is provided for, with the sanction of the two children adults. One of them is dead, and it is impossible to carry out that provision: *Montefiore v. Browne*, 7 H. L. Cas. 241: but I think the Court may under the Act exercise its power of directing a sale forthwith under the supervision of the Master. The purchase money may be paid into Court, after satisfying the mortgage, upon the trusts of the will: *Re Morgan Estate*, L. R. 9 Eq. 587; see sec. 33 of Act. Costs out of estate.