grave; he also gives a few hundred dollars in pecuniary legacies and directs some chattels to be distributed, but makes no other disposition of his personalty—as to which, therefore, he dies intestate (i.e., as to the surplus which remains after answering these demands).

He gives all real estate specifically to devisees named, and in particular the lot No. 16, situate in Brockville, to Mrs. Jones (now Boyce). This lot, however, he contracted to sell for $1,050 to Charles Hammond on the 10th October, 1910, five days after his will and twelve days before his death. Possession was to be given in March next, and the price was to be paid by $50 then paid and afterwards by monthly instalments of $10 each, including interest and principal in each payment, and then, on completion of payment, a deed to be given. Provision is made in the agreement for the cancellation of the contract in case of default in payment. The purchaser has paid the first $50 and been let into possession; and, though he has been late in some of his after-payments, the executors have not sought to take advantage of this. The terms render this forfeiture optional, and the executors appear to have a large discretion as to that.

The question was discussed as to the effect which this transaction entered into by the testator had upon the status of Mrs. Jones and whether the realty had been converted.

I think the authorities shew that the devise of land and the subsequent sale of it by the testator, even though the purchase is not to be completed till after the death, changes the nature of the property so that it is no longer under the control of the testator as land but as personalty in the shape of the purchase-money to be received. The same result follows as the result of a valid contract to sell, even though the purchaser subsequently —i.e., after the death of the testator—may lose his right to specific performance, by laches. The estate in the latter case would go to the next of kin and not to the heir at law. Both points were decided in Farrar v. Winterton, 5 Beav. 1, and in a case of Curre v. Bowyer, cited in a note at p. 6 in that volume.

Following the case of Re Dods, 1 O.L.R. 7, I answer the question by saying that Mrs. Jones has no interest in the purchase-money, and that it must all go to the next of kin of the testator.

There is difficulty about the next of kin because it is somewhat in evidence that there is a deceased wife in England who has had children by the testator—though this was not known to the public during his life in this country. He had a reputed wife here, who predeceased him, leaving no issue.