lands and premises described, and also "all the rest residue and remainder of my real estate to have and to hold to him and his heirs for ever." By the 5th paragraph, the testator gave to his executors the residue of his estate to make provision for certain legacies, and the maintenance of his son, John Norman McLellan, until he should be 18 or 21 years of age, as the executors might think advisable, and when he arrived at the age of 21 years to pay $100 to each of his five sisters. In the next paragraph he gave and devised the real estate devised to his son, from the time of his decease until the son arrived at 21 years, to the executors, with power to rent the same and receive the rents on trust as mentioned in the previous paragraph with liberty to permit the son to have possession of the farm on his arriving at the age of 18 years.

Paragraph 7: "In the event of the death of my son John Norman McLellan without lawful issue I give and bequeath all my estate to my executors with power to sell the same and divide the proceeds amongst all my brothers and sisters."

The question submitted was: "Did John Norman McLellan, under the paragraph referred to, take absolutely upon his becoming 21 years of age all of the property therein set out, or was the vesting of such property contingent upon the said John Norman McLellan having lawful heirs?"

Up to the present time John Norman McLellan had no children. It was clear that, under the first clause referred to, clause 4 of the will, the son took an estate in fee simple upon his becoming 21 years of age, unless that estate was modified by para. 7.

Order declaring that John Norman McLellan took an estate tail upon his becoming 21 years of age: Re Brown and Campbell (1898), 29 O.R. 402, and cases cited; sec. 33 of the Wills Act, R.S.O. 1914 ch. 120.

Costs of all parties out of the estate, the executors' as between solicitor and client.