HIGH COURT OF JUSTICE.

BOYD, C. OCTOBER 27TH, 1911.

MONTREUIL v. WALKER.

Will—Construction—Devise—Life Estate—Remainder in Fee to Children of Life Tenant—"Issue"—Title to Land—Ejectment—Improvements under Mistake of Title—Compensation.

Action to recover possession of land.

A. H. Clarke, K.C., for the plaintiffs.
J. H. Coburn, for the defendants.

BOYD, C.:—Cases do not much help, according to the modern view, in the interpretation of wills: of those cited I think Chandler v. Gibson, 2 O.L.R. 442, is more in point than Sisson v. Ellis, 19 U.C.R. 559, 567, where the prevalent clause was: in case the daughters "shall die without leaving issue," which was not limited by the previous use of the word "children," so that the Court could find that the intention of the testator was, that his estate should not go over to his brothers, while any of his descendants were living. In this case, the intention is, that it shall go over if the son dies childless.

The construction of this will should conform to the testator's intention, which appears to me to be plainly expressed. He gives a life estate and no more to his son Honore, with remainder in fee simple to his children, vesting as each comes into existence. If Honore dies childless, the estate in remainder goes over in fee simple to the other sons and daughters of the testator. I read the word "issue" from its context as synonymous with "children."

The result is, upon the will, that the defendants are without title and that the land is vested in the children of Honore.

I think the same result would follow even if the estate in Honore was an estate tail; for, upon the evidence, I cannot see that such an estate has been effectually barred.

But, either way, it is conceded that the present occupants are entitled to be compensated for their improvements made under mistake of title, and it will be referred to the Master at Sandwich for that purpose, who will deal with the costs of reference: costs to the hearing should be paid by the defendants.