new union school section, and thereby making material alterations in the boundaries of the existing section.

Held, that although the by-law of 1898 was passed under ss. 43 and 44 of the Public Schools Act, R.S.O., c. 292, it came within the prohibition of s. 38, s-s. 3, which required that the by-law of 1897 should remain in force for five years, and therefore the by-law of 1898 was quashed and the award set aside.

Aylesworth, Q.C., and *G. M. Vance*, for applicants. *W. L. Walsh*, for respondents.

Ferguson, J.] IN RE THOMAS AND SHANNON. [Dec. 28, 1898.

Will — Devise — Restraint on alienation — Repugnancy — Invalidity — Contingent executory interest — Remoteness — Perpetuities — Title by possession.

Petition by a vendor, under the Vendors and purchasers' Act, for an order declaring that the petitioner could make a good title in fee simple to lands in Haldimand. The petitioner derived title under the will of his father. In the early part of the will the lands were devised to the vendor in fee, and other lands were devised to other children, but in the latter part of the will there was this clause: "It is fully understood that my children have no power to make sale or mortgage any of the lands mentioned, but to go to their heirs and successors . . . Should any of my children die childless leaving husband or wife, said husband or wife to have a third during the term of their natural life."

Held, 1. The first part of this clause amounted to a total restriction upon alienation, and was repugnant to the nature of the estate given by the devisee, and was therefore void.

2. The words "die childless" in the last part of the clause should be taken to mean "die not having children, or a child living at the time of such death"; and this part of the clause created a contingent executory interest or estate of freehold, which, from its legal nature, would, upon the contingency happening in its favour, spring up into existence, thus defeating, so far as might be necessary for its existence and duration, the estate in fee devised to the petitioner; and, although not a probable event, the petitioner having many children and a wife willing to join in a conveyance, it was possible that a future wife might survive him, and his children be at the the time of his death all dead.

3. Although many children of the vendor were now living, none of whom were born till many years after the testator's death, and all of whom must die before the executory interest could take effect, yet the gift was not too remote, and did not infringe upon the rule against perpetuities.

4. The long and continued possession and occupation of the vendor did not make any difference in his favour. Order declaring that the vendor could not make a good title to the purchaser.

Clute, Q.C., for the vendor. *E. D. Armour*, Q.C., for the purchaser.