

There was a judgment of the Court on the 3rd December, 1910, upon the question of the construction of the same will.

The order directing the trial of the two questions above set forth directed that "upon the trial all questions, including that as to the effect of the former judgment, be open."

The learned Judge read the order as meaning that he was not to consider himself bound by that judgment, and that he was to determine the two questions in accordance with the terms of the will construed in the light of admissible oral evidence of surrounding and material circumstances.

So reading the will, the learned Judge was of opinion:—

(a) That the testator by the will gave and devised to Rose St. Louis and her sons all that part of lot 122 which at the time of the death of the testator belonged to him lying north of the lands owned or occupied by the Windsor and Tecumseth Railway Company, including water lots in front thereof to the channel bank of the Detroit river, save the testator's residential property devised to his wife and Teddy Mailloux and described in the will as having a frontage on the Detroit river of 100 feet and running back to a line 150 feet south of the south limit of Sandwich street.

(b) That the portion of lot 122 referred to by the testator as not hereinbefore or hereinafter bequeathed, containing about 80 acres, and taken by Eugene Mailloux and his sons under the will was and is the part of the lot owned by the testator at the time of his death lying to the south of the southerly boundary of Ottawa street, and no other part of lot 122.

(c) That, in making the devise to Eugene, and using the expression "and not hereinbefore or hereinafter bequeathed," the testator by the word "hereinbefore" referred to and intended to except all the land north of the railway lands except the plot thereafter devised to his wife, and by the word "hereinafter" be referred to and intended to except 15,000 square feet thereinbefore indefinitely referred to but not devised, and thereafter specifically excepted from the devise to Rose St. Louis and her sons and specifically devised to his wife and Teddy Mailloux.

In balancing conflicting constructions, both open upon the language of the will, the Court leans towards the construction that recognises the reasonable expectations of persons having claims upon the testator's bounty and makes a rational and convenient disposition of his property: Halsbury's Laws of England, vol. 28, para. 1283, and cases cited.

Judgment declaring accordingly. Costs of all parties out of the estate; those of the executors as between solicitor and client.