

Nor is this a case such as are to be found in the reports in which the tenant has been deprived of his enjoyment of the premises, and accordingly has a defence to an action for use and occupation. . . .

[Reference to *Whitehead v. Clifford*, 5 Taunt. 118.]

It being a question of intention on the part of the defendant, I am of opinion that the plaintiffs fail, and the appeal should be dismissed with costs.

MIDDLETON, J.

JANUARY 7TH, 1911.

RE HUNTER,

Will—Construction—Bequest to Widow—Income of Fund—When Payable—Postponement—Effect of—Vested Gift—Gift of Chattels “Used on Farm”—Residuary Clause—Division of Residue among Children in Proportion to Legacies—Life Interest of Legatee—Alteration in Amount of Legacy by Codicil—Devise of Interest in Land—Unpaid Purchase-money.

Motion by the executor of the will of W. H. Hunter, deceased, for an order declaring the proper construction of the will.

C. R. McKeown, K.C., for the executor.

Shirley Denison, K.C., for the widow.

F. W. Harcourt, K.C., for the infants.

R. B. Beaumont and J. M. Cairns, for the adult children.

MIDDLETON, J.:—Several questions that are not easy to determine arise upon this will.

The testator was married twice. The adult children are issue of the first wife—Earl Hunter is the eldest son of the widow.

The homestead farm is given to this son, upon his arriving at the age of twenty-one years, for his life, and at his death to his eldest son then living, in fee. Earl is to have the control and management of this farm from the time he is eighteen. He is now about fifteen. The will contains elaborate provisions dealing with this farm in the event of Earl dying and leaving no living son surviving. No question now arises upon these provisions.

Out of the chattels upon the farm certain horses, cows, and other live-stock, implements, etc, are to be retained by the wife