

duty of the Judges is to ascertain the meaning of the words of the will," and "not to speculate upon the meaning of the words used by the testator which lets in the consideration what he intended to have done:" per Lord Westbury, 11 H. L. C. 375, at p. 388.

If, then, the testator has devised land which he did not own, with nothing more in the will to assist, although there is little (or no) doubt that thereby he intended to devise some land he did own, the latter land will not pass, and "there is a clear and well-defined rule of law which stands inexorably in the way of receiving evidence that that lot was intended: per Burton, J.A., in *Doyle v. Nagle*, 24 A. R. 162, at p. 165. But, if there be any words in the will which would be effective to dispose of the land actually owned by the testator, even if the wrong description were entirely omitted, the land passes, and the wrong description is but *falsa demonstratio*, which may be removed by evidence as a *litent ambiguity*.

[Reference to *Doe Lowry v. Grant*, 7 U. C. R. 125; *Doyle v. Nagle*, 24 A. R. 162; *Re Harkin*, 7 O. W. R. 840.]

In the present will it is perfectly manifest that the testator intended to devise land which he owned—the very precise disposition of it proves that beyond question—but it is not enough in our law for a testator to intend to devise; he must use words which are in law effective to make a devise.

There will be a declaration that the testator died intestate in respect of the land in question; and the orders which follow from that declaration will issue. . . . Costs of all parties out of the fund.

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SIVEN V. TEMISKAMING MINING CO.—MASTER IN CHAMBERS  
—OCT. 13—LATCHFORD, J.—OCT. 14.

*Pleading — Statement of Defence — Amendment — Workmen's Compensation for Injuries Act, sec. 9 — Statutory Limitation — Solicitor's Slip — Costs.*—Motion by the defendants for leave to amend the statement of defence by setting up that the action was barred by statutory limitation. The action was for damages for injury to the plaintiff by the negligence of the defendants, and the statement of claim alleged causes of action at common law and under the Workmen's Compensation for Injuries Act. It was admitted that the accident from which the injury was sustained