

*Held*, that the company was affected by what had been done by N. so as to preclude it from disputing the right of the bank to pay the cheques and charge the plaintiffs with amounts thereof.

*Aylesworth*, K.C., and *Jeffery*, for plaintiffs. *Hellmuth*, K.C., and *Ivy*, for defendants.

Meredith, J.]

IN RE BROWN v. SLATER.

[Feb. 3.

*Will—Construction—Life estate—Survivorship—Disentailing deed—Condition of devise—Bearing testator's name—Vendor and purchaser.*

A testator devised the lands "whereon I now reside" to his son "during his natural life, and at his decease to the second male heir of him and his present wife, and his heirs male for ever, and in default of a second male heir to their eldest surviving female heir or child, and her male heirs for ever, provided she continues to bear my name during her life." The testator's son had by the wife mentioned in the will four children, one son and three daughters, of whom one son and one daughter survived the testator's son and his wife. One of the daughters who predeceased the testator's son had previously joined with him in a disentailing deed in which it was recited that she was the tenant in tail in remainder expectant upon the decease of her father.

*Held*, that the testator's son took a life estate only, and the surviving daughter an estate tail male; and that the disentailing deed did not stand in the way of that daughter making a conveyance of the lands in fee.

*Held*, also, that the condition as to continuing to bear the testator's name did not prevent the daughter, being unmarried, from conveying in fee.

*A. W. Brown*, for vendor. *W. T. Evans*, for purchaser.

Falconbridge, C.J., Meredith, C.J.]

[Feb. 6.

NEELY v. PETER.

*Water and watercourses—Injury to land by flooding—Claim for damages—Summary procedure—Costs of action—Erection and maintenance of dam—Liability of owners—Tolls—Liability of lumbermen using dam—Injunction.*

The judgment of STREET, J., 4 O.L.R. 293, was affirmed for the reasons given by him; and, in addition to the damages awarded to the plaintiff against the added defendants, an injunction was granted restraining these defendants from penning back the waters of the river in question, but the operation of the injunction was suspended for a year to enable those defendants to acquire the right to overflow the plaintiff's land, under the provisions of R.S.O. 1897, c. 194, or otherwise.

*Arnold*, for plaintiff. *Haight*, for defendants.