

order determining a question as to the property falling under the devise, which was contained in the will of one Tanner, deceased.

H. E. Rose, K.C., and K. W. Wright, for the applicant.

L. C. Raymond, for the executors.

J. M. Ferguson, for the children of William and George Tanner.

E. C. Cattnach, for the Official Guardian, representing the infants.

MIDDLETON, J., in a written opinion, said that the testator gave Roland his "homestead property." At his death the testator owned $22\frac{1}{2}$ acres, constituting a farm, with residence and outbuildings. Across the road from it, he had one-fifth of an acre, on which was a small house, which, according to the uncontradicted evidence, was for twenty years used as a dwelling-place for the "hired man" employed from time to time to help work the larger parcel.

The small parcel, the learned Judge held, passed to Roland as part of the property given him: *In re Willis*, [1911] 2 Ch. 563.

Bigelow v. Bigelow (1872), 19 Gr. 549, was distinguishable upon the facts.

It is always a question of the intention of the testator as applied to the facts—and, as the testator here had acquired and used this parcel as a part of his homestead, it was more probable that he meant Roland, to whom the homestead was given, to take it in its entirety than dismembered; and this was aided by the somewhat unusual expression "homestead property."

Declaration accordingly; costs of all parties out of the residuary estate.

BOYD, C.

JUNE 26TH, 1916.

*DIEBEL v. STRATFORD IMPROVEMENT CO.

*Company — Powers of — Contract — Guaranty—"Advances"—
Ontario Companies Act, R.S.O. 1914 ch. 178, sec. 23(1) (k)—
6 Geo. V. ch. 35, sec. 6, Adding sec. 210 to Companies Act.*

Appeal by the plaintiff from the report of BARRON, Co.C.J. of Perth, to whom the action was referred under sec. 65 of the Judicature Act. The action was upon a sealed guaranty.

The appeal was heard in the Weekly Court at Toronto.