

widow and Philip made a conveyance of the land devised to him, under which the plaintiff claimed. At the time of this action Philip and his children were still living.

Held, that the estate in fee in Philip was subject to being divested by his dying "leaving no children," which might still happen, and in which event the executory devise over would take effect.

The fourth rule laid down in *Edwards v. Edwards*, 15 Beav. 357, is overruled by *O'Mahoney v. Burdette*, L.R. 7 H.L. 388, and the rule now is, that when there is a gift over in the event of death without issue, that direction must be held to mean death without issue at any time, unless a contrary intention appears in the will, and that the introduction of a previous life estate does not alter that principle of construction. *Olivant v. Wright*, 1 Ch. D. 346, followed.

Held, also, that the provision in the will as to any of the children of the testator being "disposed to sell" did not shew a "contrary intention."

Held, also, that a "contrary intention" was not indicated by a devise in the same will to another son subject to the same limitation and conditions, but subject also to the payment of legacies of \$2,900 at the expiration of two years from the testator's death—which appeared to be inconsistent with anything short of an absolute estate in fee. *Cowan v. Allen*, 26 S.C.R. 292, followed.

Held, therefore, that the plaintiff's title was not one that could be forced upon an unwilling purchaser, and a decree for specific performance should be refused.

G. M. Macdonnell, K.C., for plaintiff. E. H. Smythe, K.C., and H. I. Lyon, for defendant.

Meredith, C.J., MacMahon, J., Lount, J.]

[July 23.

LEITCH v. LEITCH.

Mortgage—Conveyance of land subject to the mortgage reserving a life estate—Right to assignment under R.S.O. 1897, c. 121, s. 2, sub-ss. 1, 2.

The father being the owner of land mortgaged it and then conveyed it to his son subject to the mortgage, and reserved a life estate to himself.

Held, that the son was not entitled, on payment of the mortgage money to the assignee of the mortgage to an assignment of the mortgage to himself or his nominee under R.S.O. 1897, c. 121, s. 2, sub-ss. 1, 2, the holder of the mortgage having notice of the equitable right of the father to have his life estate relieved of the burden by payment of the mortgage debt by the son. Judgment of FALCONBRIDGE, C.J., affirmed.

W. M. German, K.C., for the appeal. T. D. Cowper, contra.