motion should prevail, and that the action should be discontinued without costs to either party.

By the letter of 1st February, plaintiff's solicitor was led to believe that the policies "were originally and always payable to the mother," not as he had thought (and rightly) to Joseph, as appears from the letter of 4th February from plaintiff's solicitor to Mrs. Armstrong, the defendant.

I cannot but think that the incorrect statement of defendant's solicitor was the direct cause of the present action. He was not obliged to make any statement. But, having done so and misled plaintiff, his client must not complain of the result of this motion. I cannot give plaintiff more, but I do not think her entitled to less.

IDINGTON, J. OCTOBER 3RD, 1904.

CHAMBERS.

RE SMITH.

Will—Construction—Devise—Estate in Tail Male—Restrictions on Sale—Repugnancy.

Motion by John Smith Read, a devisee under the will of John Smith, late of the township of St. Vincent, farmer, deceased, for an order construing the will and codicil, and declaring the rights and interests of all parties mentioned therein.

The will was made on 7th January, 1865. By it the testator devised the north half of lot 26 in the 10th concession of St. Vincent and all other real estate he might die possessed of to his wife Jane Smith for her natural life, and on her death to John Smith Read, his heirs and assigns forever. In the event of his wife's death before or at the time of his own death he directed his executors to take possession and charge of all his real and personal estate as aforesaid, to collect or to receive all rents, debts, and other revenues accruing therefrom, and to invest the proceeds for the benefit of John Smith Read until 7th December, 1878, when they should pay over the same to him, less expenses and compensation for their trouble. The 5th paragraph said: "I will,