dated January 31st, 1885, and in all respects dealt with the said lands and the proceeds thereof as if they were all equally interested therein; their father, the Hon. R. B., having by his will divided his estate equally between them.

In May, 1886, the plaintiff, the eldest son of the said Hon. R. B., was advised he was entitled to the whole as "heir-at-law" of his father.

In an action for the construction of the said will and recovery back of the moneys paid over, and the partitioned lands remaining unsold, and the proceeds of those sold, and for a declaration that the plaintiff was solely entitled to the unpartitioned land. It was

Held, following *Tylee* v. *Deal*, 19 Gr. 601, that the Act 14 & 15 Vic. ch. (C. S. U. C. ch. 82, abolishing primogeniture), which came into force January 1st, 1852, does not apply except in cases of intestacy, and that the plaintiff was heir-at-law.

Held, also, that the several divisions of property and money did not come under the head of "Family arrangements." But,

Held, also, that the moneys paid over more than six years before action, could not be recovered; and following *Rogers* v. *Ingham*, 3 Ch. D. 351, that as to the moneys paid over within six years, an action for money had and received, would not lie for moneys paid by one party to another under a mistake of law common to both, when both had a full knowledge of all the facts.

Held, lastly, that moneys not paid over, being the proceeds of lately sold land, could not be recovered by the plaintiff, as the lands of which they were the proceeds had become vested in the different parties claiming them by possession as tenants in common and by the partition deed. *Baldwin* v. *Kingstone et al.*, 341.

5. *Construction—Specific bequest—Charge of debts—Devise of rents and profits between two to be equally divided between them, share and share alike—Tenants in common—Dower—Election—Devolution of Estates Act—R. S. O. ch. 108, sec. 4, sub-sec. 2.*]—By the first clause in his will, a testator directed that his executrix should pay his debts out of his personal estate, and then proceeded to leave to his wife, whom he named as his executrix, certain lands subject to incumbrances, and all his stock, cattle, etc., upon the said land, and then devised the residue of his real and personal estate, (after payment of his just debts and funeral expenses) and all the rents and issues thereof to a brother and sister for their lives, to be equally divided between them, share and share alike, and after their death, to their children, their heirs and assigns for ever, share and share alike. The brother pre-deceased the testator. The widow now brought this action for the construction of the will.

Held, that the bequest of the stock, cattle, &c., to the testator's wife was a specific legacy, and was not subject to the testator's debts, notwithstanding the first clause of the will.

Held, also, that the widow was not put to her election as to dower, there being no such intention to be gathered from the will.

Held, also, that the gift of the residue to the brother and sister was a gift to them as tenants in common, but that the brother having pre-deceased the testator, there was an intestacy as to his share.

Held, lastly, that it was too late now for the widow to elect to take her interest in her husband's undisposed of real estate under the Devolution of Estates Act, R. S. O. ch. 108, sec. 4, sub-sec. 2. By bringing this