

The five sons are desirous of mortgaging their shares for the purpose of raising money to pay off the charges which have matured and certain debts of the testator which are charged upon the land, and the object of the present application, which is made by them, is to obtain the opinion of the Court as to whether the restraint upon alienation which the testator has attempted to create is valid.

I cannot find that Rule 938 gives me any authority to determine this question. The question propounded is one with which the executors have nothing to do, and it does not in any way relate to the administration of the estate. The rights or interests of the devisees inter se or as between them and the executors, or as between them and their brother and sisters, are not in question at all: *Re Sherlock*, 18 P. R. 6; *Re Whitty*, 30 O. R. 300.

The only question is whether these five devisees who make the application, and who undoubtedly take under the will a fee simple in the lands devised to them, are restrained from afterwards dealing with their lands in the usual manner.

The question is a highly important one, and has been the subject of great differences of judicial opinion, and I must not assume to deal with it without jurisdiction to determine it.

The motion must be dismissed, but, as objection was not taken to my power to deal with the question, there will be no costs.

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NOVEMBER 25TH, 1904.

DIVISIONAL COURT.

BELL v. LOTT.

*Trespass—Searching Private Dwelling House without Warrant—Liquor License Act—House of Public Entertainment—Honest Belief—Leave and License—Questions for Jury—Pleading.*

Appeal by plaintiff from judgment of senior Judge of County Court of Hastings, withdrawing the case from the jury and dismissing the action at the conclusion of the trial.

The action was brought to recover damages for an alleged trespass to land and searching the dwelling-house of plaintiff.

E. G. Porter, Belleville, for plaintiff.

J. H. Moss, for defendant.