

Eng. Rep.]

GRANT v. GRANT.

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made, but that is a different point." Platt replies "search has been made for precedents, but none have been found. Blackstone's commentaries, vol. 3, edition of 1862, page 117, says: "A prohibition is a writ issuing properly only out of the Court of Queen's Bench, being a prerogative one; but for the furtherance of justice it may also now be had in some cases out of the Court of Chancery, Common Pleas or Exchequer, directed to the judge and parties of a suit in any inferior court, commanding them to cease from the prosecution thereof, upon a suggestion that either the cause originally, or some collateral matter arising therein, does not belong to that jurisdiction, but to the cognizance of some other court." If old Blackstone is still law, and the Imperial Act, British North America Act, 1867, is still in force—no other court but the Arbitrators' Court can have cognizance of the arbitration.

It is greatly to be regretted that there was no counsel, as in the case of the unanimity question, to argue the other side; but, as has been remarked by my colleague, that is not our fault. If these legal questions are to be raised on every occasion, it was manifestly of the highest importance that Judge Day should have remained at his post. He did not resign—so far as we know—because he differed with his colleagues in concluding that the decisions of the arbitrators need not be unanimous. He assigned no such reason for his resignation, and on that question gave no decision, and so far as his colleagues know, expressed no opinion, although he was present at the argument, and subsequently looked into the authorities with his colleagues. His resignation, as stated at the time, was on other grounds; but whether they have his able assistance or not, the remaining arbitrators must proceed with the work, and decide on all questions as they arise according to the best of their judgment.

The meeting then adjourned till the 17th instant.

On that day the arbitrators proceeded with the reference, no person being present on the part of the Province of Quebec.

## ENGLISH REPORTS.

### GRANT v. GRANT.

*Will—Construction—Meaning of word "nephew"—Latent ambiguity—Parol evidence.*

Devise "to my nephew Joseph Grant."

At the testator's death he had two relatives living named Joseph Grant—viz., the plaintiff, who was a son of the testator's own brother, and the defendant, who was a son of a brother of the testator's wife.

**Held**, in an action of ejectment that parol evidence tendered by the defendant was admissible to show a latent ambiguity in the will, the word "nephew" having no definite legal signification, and that the defendant might show that the testator was in the habit of calling him his nephew; also that, the ambiguity having been thus raised, the defendant might give parol evidence to remove the ambiguity and show that the testator intended the devise to him and not to the plaintiff.

[18 W. R. 576.]

This was an action of ejectment for a house and premises at Rugby, and the defendant, who was in possession, defended for the whole.

A case was, by consent, stated for the opinion of the Court under the Common Law Procedure Act, 1852.

John Grant, the testator, at the time of making the will and codicil hereinafter mentioned, and at the time of his decease, was seized in fee of a dwelling-house and premises at Rugby (being the premises in the writ in this action mentioned), and continued to live therein up to the time of his death. The said house and premises were in the said will expressed to be devised under the words—"I devise to my said nephew Joseph Grant, his heirs and assigns, the said house and premises where I now live." John Grant made his will on the 18th of February, 1868, and a codicil thereto on the 21st February, 1868.

The will and codicil were as follows:—

"This is the last will and testament of me, John Grant, of Rugby, in the county of Warwick, dealer in marine stores, as follows; I direct the payment of my just debts, funeral and testamentary expenses, I bequeath to my niece Ann Liggins, the sum of three hundred pounds free of legacy duty; and I devise to my said niece Ann Liggins, her heirs and assigns, my house in Pennington street, in Rugby aforesaid, in the occupation of — Hudson, and my house in Riley's court, and my three houses in Gas Street, Rugby; I devise to my niece Mary Pettifer, her heirs and assigns, my five houses in New Bilton; I devise to my niece Emma Bench, her heirs and assigns, my house in Rugby, in the occupation of — Prest, my house at Old Bilton, in the occupation of — Pain, and my two remaining houses in Pennington street, in the occupation of Whitwell and Resishaw; I bequeath to my nephew Joseph Grant, the sum of five hundred pounds, and all the stock and household effects in the house where I now live, and I devise to my said nephew Joseph Grant, his heirs and assigns, the said house and premises where I now live; I devise to my nephew James Grant, his heirs and assigns, the house and premises in the Lawford road, in the occupation of Lessimer the miller; I devise all my real estate, if any, unto my said nephew Joseph Grant, his heirs and assigns; I bequeath all the residue of my personal estate unto my said nephew James Grant absolutely; I appoint my said nephew Joseph Grant executor of this my will. In witness &c."

"This is a codicil to the last will and testament of me John Grant, of Rugby, in the county of Warwick, dealer in marine stores, dated the 18th of February, 1868. I appoint my nephew James Grant an executor of my said will in conjunction with nephew Joseph Grant; and I devise all estates vested in me as trustee or mortgagee unto the said Joseph Grant and James Grant, their heirs and assigns, subject to the equities affecting the same. In witness whereof, &c."

The testator died on the 22nd of February, 1868. His eldest brother, William Grant, survived him, and is heir-at-law. The claimant, Joseph Grant, the plaintiff in this action, is a son of the testator's brother, William Grant, and is a lawful nephew of the testator. The said Ann Liggins, Mary Pettifer, and Emma Bench, described by the testator in his will as nieces, are the married daughters of his brother, Thomas Grant. James Grant described in the will and codicil as his nephew, is a son of the testator's brother, Thomas Grant, and brother of Ann Liggins, Mary Pettifer, and Emma Bench. No