heirs were in favour of a sale, which was proved, and that the jurisdiction to partition was ousted. *Re Dennis, Downey et al.* v. *Dennis et al.*, 267.

5. *Construction— General intention in favour of a class — Particular intention in favor of an individual — Possession — Devise to possessor without title — Estate tail.*] — One J. McP. lived upon lot 26, of which his father, A. McP., was owner from 1826 till 1878, when he died, leaving twelve children him surviving. A. McP. died in 1841, having by will devised lot 26 to J. McP., but adding: "He is not to sell or dispose of the said lands, nor any of the timber or wood now growing on the said lot; on the contrary, the land is to devolve on the most deserving of his children, according to the discretion of my executors, that is to say, after his own death." In 1869, J. McP. conveyed the north half of lot 26 in fee to the defendant. The executrix of A. McP. made no selection as to who was the most deserving of his children on whom the land should devolve. Nevertheless the plaintiff, a son of A. McP., now laid claim under the above devise to seven-twelfths of the lot, being his own share and six other shares which he had acquired.

*Held*, affirming the decision of Rose, J., that he was entitled to judgment in respect to seven-twelfths of the land, for that J. McP. only took a life-estate under the said will, under which he must be said to have taken, as he did not disclaim the benefit of it, and had not acquired title by possession at the time of his father's death; and though no selection had been made among the children of A. McP., the Court would carry out the general intention in favour of the class by holding that the estate descended on the twelve children of J. McP.

*Per* BOYD, C.—There was no estate tail given to J. McP. under the will, for (1) "children" in it had its primary meaning of descendants of the first generation only; and (2) the children were not to take as a class, in the first instance, but only those out of that class to be indicated by the executors as the most deserving. *McPhail* v. *McIntosh*, 312.

6. *Mortgage — Appointment — Time of payment — Interest.*]—A mortgage to secure $800 on certain lands was made by T. K. to his father. The proviso for payment was that the $800 was to be paid to the mortgagee's executors or administrators in eight equal annual instalments of 100 each, the first payment to be made one year after the mortgagee's decease, upon trust to pay the same to such person or persons as the mortgagee should by deed endorse on the mortgage, or otherwise by deed direct and appoint; and in default of appointment to his children other than his son John, &c. No appointment was made by deed indorsed on the mortgagee, or otherwise by deed. The mortgagee by his will directed that the $800 should be payable, namely, $200 to each of his three daughters A., M. and B. and $100 each to his granddaughter K. and his widow, to be paid forthwith after his death.

*Held*, that the will constituted a valid appointment under the proviso in the mortgage, and that th legatees or appointees under it were entitled to the sums bequeathed to them; but that the time for the payment of the money must be in accordance with the terms of the mortgage.