

MIDDLETON, J.:—The late Pierre Charron, as he appears to have written his name, was admittedly the owner of the entire parcel designated on the plan as lot A, bounded by Tecumseh road, the concession road, the extension of Broadway, and 11th Street. This contained about 100 acres.

By his will, dated the 21st October, 1860, Charron attempted to dispose of the land in question. This will has been already the subject of litigation, and is set forth in the report of *Re Sharon and Stuart*, 12 O.L.R. 605, where an application was made under the Vendors and Purchasers Act, and Sir Glenholme Falconbridge, C.J.K.B., interpreted the will in such a way as to indicate that a good title could not be made to the portion now owned by Stuart.

On the hearing of this case, all parties agreed to accept the facts as stated in that report, and supplemented the facts there stated by fresh evidence and admissions.

By the will, clause "secondly," the testator gave "to my three sons Gilbert, Oliver, and Joseph the south part of lot lettered A . . . containing fifty arpents (not acres as stated in the report) to have and to hold to them as is aforesaid mentioned." By another clause, also numbered "secondly," the testator directs that the "land covered with water running through lot lettered A as aforesaid, that is, the marsh land, be used in common by all my sons for the purpose of hunting, fishing, and keeping swine or cattle."

Shortly after the death of Charron, the sons by common consent set apart three portions of the easterly end of lot lettered A. These contain, together, almost the fifty arpents. Gilbert took the easterly portion, and it is admitted that Stuart has acquired the interest of all the children of Gilbert in the fifty arpents. If this partition stands, then Stuart will be entitled to retain the portion of land of which he is in possession. In the same way it is admitted that Strong has acquired the interest of all the children of Oliver, who took the more westerly of the three portions. Joseph took the central portion, and his interest has been conveyed to the defendant Taylor, but she has not acquired the interest of Joseph's only child.

The sons, it appears, assumed that the whole of the westerly portion of the land passed to them as tenants in common, and this, containing about sixty acres, was subdivided into fifths—Chevalier, who lives on the portion between the fifty arpents and the creek, having acquired two one-fifth interests, thus giving him the 24 or 25 acres remaining on that side of the