

begotten, subject to a charge of £40 to be paid to my brother Nelson in instalments, the first instalment to be payable one year after my said brother Patrick shall take possession of the said lands, which shall not be till three years after my decease, my father retaining possession of the said land during the said term for his own benefit. . . . And I further direct that the said lot shall at no time ever be mortgaged, sold, or let, and that if my brother Patrick should die without issue lawfully begotten, the said lands shall descend to my next younger brother and his heirs as aforesaid."

BOYD, C., held, first, that the words of description in the will, which did not include any mention of the concession, were not per se sufficient to operate as a devise of the lands; and that, as the ambiguity was patent, to admit parol evidence of the intention of the testator, in order to identify the lands, would be to go in the teeth of the Statute of Frauds. But held, also, that looking at the provision giving the testator's father the benefit of the land for a term of three years, and the undisputed evidence of the fact that testator's father had after testator's death worked lot 27 in the 10th concession of Goulbourn jointly with his son Patrick until the latter died, aged 22, in 1848, there was no difficulty in finding that the will carried the land to the beneficiary named therein.

Held, on the second point, that the clause restricting alienation was not operative, since it expressly referred only to the first devise to Patrick, and since, even if it were to be read as applicable as well to the devise to Nelson, Patrick's younger brother, the present vendor, then the point was covered by *Re Thomas and Shannon*, 30 O. R. 51, and that the restrictive clause must, therefore, be held void as repugnant to the nature of the estate devised.

Order declaring in favour of the title.

NOVEMBER 24TH, 1902.

C. A.

DAVIS v. WALKER.

Donatio Mortis Causa — *Solicitor* — *Lack of Independent Advice* — *Action against Administrator* — *Want of Corroboration* — *Burden of Proof* — *Costs*.

An appeal by plaintiff from judgment of FALCONBRIDGE, C.J., ante 3, dismissing the action.

The defendant was administrator of the estate of Betsy Ann Walker, who died on the 28th February, 1900, intestate and without children.