

from Richard Quance, executor, to me, said lands being composed of part of lot three in the fourth block and second concession of the township of Binbrook." This covers the second parcel comprised in the Quance conveyance.

The third parcel was on the opposite side of the concession road, and is part of lot two, block four, concession one, Binbrook. The daughter claims that, notwithstanding the fact that this land is not specifically described, it passes to her, as it constitutes part of the "balance" of the lands described in the deed, which she says is the governing part of the description, followed by a defective enumeration.

There is a residuary clause, which purports to deal with the residuary realty as well as the residuary personalty, and it is shewn that, if this piece of land is included in the devise to the daughter, there is no real estate to pass under the residuary clause.

I do not regard this as affording any assistance, and it appears to me that the clause in question must be dealt with, and the gift to the daughter interpreted, quite apart from any consideration based upon the residuary clause. It is only important as indicating that in any event there will not be an intestacy.

Where a testator, manifestly intending to describe lands which he does own, erroneously describes lands as to which he has no title, the Court is often enabled to give effect to the testator's wishes by rejecting entirely the erroneous description. If there then remains sufficient to operate as a devise of the land which the testator actually owns, it will pass by the will. Cases of this type are collected and well discussed by my brother Riddell in *Re Clement*, 22 O.L.R. 121, and *Smith v. Smith*, 22 O.L.R. 127. All these cases proceed upon the theory that the Court is giving effect to the real intention of the testator as expressed upon the face of his will, such intention not being permitted to be defeated by a mere erroneous particular description of land which has been already adequately described in general terms.

That, however, does not help in solving the problem presented by this will. This is not the case of a testator erroneously describing as his own something which he does not own and omitting a description of that which he does own. He owned two parcels which are adequately and properly described as constituting the residue of the land conveyed to him by Quance. If I could be satisfied from the will that he intended to give both these parcels to his daughter, then the fact that he afterwards describes one would not defeat her rights; but when these