

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

Ferguson, J.]

[March 10.]

SAUNDERS V. BREAKIE.

Will—Construction—Description of lands—Waste—Injunction.

A testator by his will devised his property as follows: "First, I devise and bequeath to my son, W. A. S., the easterly part of my lot No. 6 in the 3rd con. west of Yonge St., in the township of York, being described as $\frac{1}{2}$ part of the length and the entire width, measuring westward from the easterly limit of the said lot No. 6, and containing by admeasurement $66\frac{2}{3}$ acres, etc. Second, I give, devise and bequeath unto my son, H. D. S., all my personal property, . . . and I also devise and bequeath to my said son, H. D. S., the middle part of my said lot No. 6 in the 3rd con. west of Yonge St., in the said township of York, being described as $\frac{1}{2}$ part of the length and the entire width, measuring westward from the land heretofore devised to my son, W. A. S., of the said lot No. 6, and containing by admeasurement $66\frac{2}{3}$ acres, etc. Third, I devise and bequeath to my daughter, Annie, the wife of J. B., of the said township of York, farmer, the remaining $\frac{1}{2}$ part of my said lot No. 6, in the 3rd con. west of Yonge St., in the said township of York, being described as $\frac{1}{2}$ of the length and entire width of the said lot No. 6, measuring westward from the land heretofore devised to my son, H. D. S., and extending to the westerly limits of said lot No. 6, containing by admeasurement $66\frac{2}{3}$ acres, be the same more or less, to have and to hold the said hereby devised land and premises unto, and to the use of my said daughter, A., for, and during the term of her natural life, with remainder thereof on her decease to the children of her body and their heirs and assigns for ever."

The following was a codicil: "I do hereby alter . . . my said will so that should my said daughter, A., the wife of J. B., die without issue or should outlive her issue, the remainder thereof shall revert to my own heirs, share and share alike."

The testator had during his lifetime sold and conveyed away 12 acres from the easterly $\frac{1}{2}$ part of the lot, and 5 acres from the centre $\frac{1}{2}$.

Held, that the land was virtually described by metes and bounds, and that each devisee took, according to the measurements given,

viz., $\frac{1}{2}$ part of the length of the lot and the whole width of it, as the testator had title to and power to devise.

Held, also, that on the application of the reversioner the defendants, J. B. and A. B., while they had the right to cut and destroy timber for the purpose of properly cultivating the land, they had no right to cut and sell the same timber, even if cut for the same purpose, and an account was ordered to be taken of that already sold and an injunction granted restraining the cutting and selling the timber from off the land.

MacLennan, Q.C., for plaintiff.

C. H. Ritchie, for adult defendants.

Plumb, for infant defendants.

Boyd, C.]

[March 12.]

CARD V. COOLEY.

Will—Construction—Widow's election between dower and devise.

A testator devised to his wife "one half of the place where I now live, being etc., . . . so long as she shall live, and no longer . . . also the half of all the goods and chattels I may own at the time of my demise to dispose of as she may think proper for the benefit and partial support of my daughter . . ."

He also devised "to my grandson . . . the place or homestead where I now live, it being (same property) with all that appertains thereto subject nevertheless to the following conditions, that is to say: my wife shall have quiet and peaceable possession of one-half of all said premises with all that appertains to said half of said homestead for her own use and benefit as long as she shall live."

There was also a devise to the grandson of one-half of all the goods and chattels he owned at the time of his death.

Held (reversing the decision of the Master at Belleville), the widow was not entitled to dower in the homestead and the life estate in half of it, but must elect which she would take.

Dickson, Q.C., for appeal.

Clute, contra.