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APPELLATE DIVISION.

October 4th, 1915.

CANADIAN PRESSED BRICK CO. v. COLE.

Fraudulent Conveyance—Husband and Wife—Intent to Defeat Creditors of Husband—Claim of Creditor against Husband—Contract—Novation—Evidence.

Appeal by the defendants from the judgment of Middleton, J., 8 O.W.N. 499.

The appeal was heard by Meredith, C.J.O., Garrow, Maclaren, and Magee, JJ.A.

P. R. Morris, for the appellants.

A. M. Lewis, for the plaintiffs, respondents.

The Court dismissed the appeal with costs.

October 4th, 1915.

*Re ARTHUR AND TOWN OF MEAFORD.

Municipal Corporations — Local Option By-law — Motion to Quash—Discretion.

Motion by W. H. Arthur to quash a local option by-law passed by the Municipal Council of the Town of Meaford on the 16th February, 1914.

The motion was referred to a Divisional Court of the Appellate Division by Middleton, J.: see 34 O.L.R. 231, 8 O.W.N. 557.

The motion was heard by Falconbridge, C.J.K.B., Riddell, Latchford, and Kelly, JJ.

W. A. J. Bell, K.C., for the applicant.

W. E. Raney, K.C., for the respondents, the town corporation.

*This case and all others so marked to be reported in the Ontario Law Reports.

THE COURT was of opinion that, in the admitted circumstances of the case, its discretion should not be exercised in favour of the motion.

No opinion was expressed as to the validity or otherwise of the by-law.

Motion dismissed with costs.

OCTOBER 4TH, 1915.

*RE STANDARD LIFE ASSURANCE CO. AND KEEFER.

Life Insurance—Policies Declared to be for Benefit of Wife and Children—Rights of Children of Deceased Children—Retrospective Legislation—Insurance Act, R.S.O. 1914 *ch.* 183, *secs.* 170, 171 (9), 178 (1), (7).

Appeal by Charles H. Keefer from the order of MIDDLETON, J., 8 O.W.N. 559, 34 O.L.R. 235.

The appeal was heard by FALCONBRIDGE, C.J.K.B., RIDDELL, LATCHFORD, and KELLY, JJ.

H. M. Mowat, K.C., for the appellant.

F. W. Harcourt, K.C., for the infant respondents.

G. L. Smith, for the adult respondents.

THE COURT dismissed the appeal with costs.

OCTOBER 4TH, 1915.

*GRANT'S SPRING BREWERY CO. LIMITED v. E. LEONARD & SONS LIMITED.

*E. LEONARD & SONS LIMITED v. GRANT'S SPRING BREWERY CO. LIMITED.

Sale of Goods—Warranty—Defects—Bad Workmanship—Possible Cause of Defects—Evidence—Causal Connection—Repairs—New Evidence—Motion for Leave to Adduce.

Appeals by both companies from the judgment of MEREDITH, C.J.C.P., at the trial, dismissing both actions without costs.

The first action was brought to recover damages for a breach of warranty upon the sale of two boilers; and the second action was brought to recover a sum for work done by the Leonard

company, the manufacturers and vendors, in repairing the boilers, etc.

The appeals were heard by FALCONBRIDGE, C.J.K.B., MAGEE, J.A., LATCHFORD and KELLY, JJ.

G. Lynch-Staunton, K.C., and F. F. Treleaven, for the brewery company.

Sir George Gibbons, K.C., and G. S. Gibbons, for the Leonard company.

LATCHFORD, J., delivering judgment, said that the Leonard company warranted that "only the best workmanship and material" should be used in the construction of the boilers which they contracted to make and did make for the brewery company. The claim for damages for breach of warranty was based upon the single ground that the leaks and cracks resulted from bad workmanship—the lap of one plate over the other was said to be too great, and the caulking too heavy. The onus was upon the brewery company to establish the excess in these respects, and that the excess in one respect or the other caused the leaks and cracks which rendered the boiler unfit for use.

It was argued by the brewery company that, if workmanship (as found by the trial Judge) not so good as it might have been might have caused the defects, then, in the absence of proof that they resulted from some other cause, the defects must be attributed to the possible cause, and the plaintiffs were entitled to recover damages.

Reference to Badcock v. Freeman (1894), 21 A.R. 633; Dominion Cartridge Co. v. McArthur (1901), 31 S.C.R. 392; McArthur v. Dominion Cartridge Co., [1905] A.C. 72; Shawinigan Carbide Co. v. Doucet (1909), 42 S.C.R. 281, 311.

There was lacking in the case at bar evidence of any connection between the faults found with the workmanship and the defects which developed in the boiler. The bare possibility referred to by the trial Judge was not sufficient in the absence of the exclusion of all other reasonably possible causes. No reasonably probable cause for the defects having been proved, the action of the brewery company was properly dismissed.

The Leonard company failed to establish their claim to be paid for the repairs made in 1914. They were not to receive payment unless the defects were due to excessive firing, and excessive firing was held not to have been proved.

Both appeals should be dismissed without costs.

After the hearing of the appeals, and while they were standing for judgment, a motion was made by the brewery company for leave to adduce new evidence, shewing the recent development of a crack extending from a rivet to the edge of a plate in one of the boilers. If this evidence were admitted, it could not affect the result, as the crack was not shewn to have arisen from either of the two defects on which the brewery company based their case.

The motion should be dismissed with costs.

FALCONBRIDGE, C.J.K.B., and MAGEE, J.A., concurred.

KELLY, J., agreed in the result.

Appeals dismissed without costs; motion dismissed with costs.

OCTOBER 4TH, 1915.

*McNULTY v. CLARK.

Woodman's Lien—Action to Enforce Claims of Several Persons —Woodman's Lien for Wages Act, R.S.O. 1914 ch. 141, secs. 11, 33—Jurisdiction of District Court—"Claim"— "Person"—Interpretation Act, R.S.O. 1914 ch. 1, sec. 28(i).

Six woodmen each claimed a lien for wages, under the Woodman's Lien for Wages Act, R.S.O. 1914 ch. 141, on certain pulpwood belonging to the defendant. Each claim was under $200; the claims aggregated $310.20. The six claimants united in one action, in the District Court of the District of Temiskaming, to enforce their claims. No proceedings were taken to set aside the writ of summons; pleadings were delivered; and the action came down for trial before the District Court Judge, who held that his Court had no jurisdiction, and dismissed the action.

The plaintiffs appealed.

The appeal was heard by FALCONBRIDGE, C.J.K.B., RIDDELL, LATCHFORD, and KELLY, JJ.

J. M. Ferguson, for the appellants.

H. S. White, for the defendants, respondents.

RIDDELL, J., delivering the judgment of the Court, said that

apparently the District Court Judge was of the opinion that the language of sec. 11 of the Act imported that every claim under $200 must be litigated in a Division Court, although it might, under the provisions of sec. 33, be combined with another or others in one action, bringing the whole amount claimed over $200. The learned Judge was wrong in his interpretation of the statute: the law allows the combination of two or more claims (sec. 33); and the word "claim" in sec. 11 refers to the whole amount claimed in the action. All difficulty which might arise from the use of the word "person" in the first line of sec. 11 is got over by sec. 28(*i*) of the Interpretation Act, R.S.O. 1914 ch. 1.

The appeal should be allowed with costs—i.e., all costs thrown away in the Court below and the costs of this appeal.

OCTOBER 4TH, 1915.

*RE TOWNSHIP OF COLCHESTER NORTH AND TOWNSHIP OF ANDERDON.

*RE TOWNSHIP OF GOSFIELD NORTH AND TOWNSHIP OF ANDERDON.

Municipal Corporations—Drainage—Injuring Liability—Drainage Scheme—Cost in Excess of Benefit—Report of Engineer—Appeal to Drainage Referee—Municipal Drainage Act, R.S.O. 1914 *ch.* 198.

Appeals by the Corporations of the Township of Colchester North and Gosfield North from a judgment of the Drainage Referee dismissing the appellants' appeals from the report of an engineer by which the appellants were found subject to "injuring liability" under the Municipal Drainage Act, R.S.O. 1914 ch. 198.

The appeals were heard by FALCONBRIDGE, C.J.K.B., RIDDELL, LATCHFORD, and KELLY, JJ.

J. H. Rodd and R. L. Brackin, for the appellants respectively.

T. G. Meredith, K.C., and J. M. Pike, K.C., for the respondent.

RIDDELL, J., delivering judgment, said that the drainage work proposed to be done would cost in all over $100,000, of which the appellant Colchester North was to pay over $50,000, and the ap-

pellant Gosfield North $11,000 odd. By no ingenuity could the pecuniary advantage, direct or indirect, be brought up to $50,000—and no other kind of advantage was suggested. Such a scheme should never be approved of—it would be throwing away money. It was not as though those who were injured had no remedy; the Courts were open, and full compensation might be had from any offending municipality or person. It was never intended that this Act should be made a means of throwing away money: McGillivray v. Township of Lochiel (1904), 8 O.L.R. 446, 453; Gosfield South v. Mersea (1895), 1 Clarke & Scully's Drainage Cases 268, 270, per Britton, Drainage Referee, whose decision should be approved and followed.

Re Township of Orford and Township of Aldborough (1912), 27 O.L.R. 107, and Re Township of Huntley and Township of March (1909), 1 O.W.N. 190, 14 O.W.R. 1033, were also referred to.

On an appeal to the Drainage Referee, he must consider the objections to the scheme advanced by the appellant, and no stronger ground could be suggested than that the scheme would cost more than it was worth.

The appeals should be allowed, and the appellants should have their costs throughout.

Falconbridge, C.J.K.B., and Latchford, J., concurred.

Kelly, J., also concurred, for reasons to be stated in writing.

Appeals allowed.

October 4th, 1915.

DONOVAN v. WHITESIDES.

Sale of Goods—Condition as to Quality—Non-fulfilment—Rescission—Return of Money Paid and Promissory Notes Given—Damages—Return of Goods.

Appeal by the defendants from the judgment of Sutherland, J., 8 O.W.N. 483.

The appeal was heard by Falconbridge, C.J.K.B., Riddell, Latchford, and Kelly, JJ.

H. C. Macdonald, for the appellants.

J. M. Langstaff, for the plaintiff, respondent.

The Court dismissed the appeal with costs.

OCTOBER 5TH, 1915.

*MANNING v. CARRIQUE.

Contract—Sale of Shares—Offer to Sell—Ambiguity—Contemporaneous Interpretation by Conduct of Parties—Acceptance—Reasonable Time for Acceptance—Article of Fluctuating Nature.

Appeals by the defendant and the third parties from the judgment of the County Court of the County of York in an action to recover $750 damages for the refusal of the defendant to deliver 50 shares of Royal Bank stock, pursuant to an alleged agreement. The judgment of the County Court was in favour of the plaintiffs for $300 without costs, and for the defendant against the third parties for relief over or indemnity and for costs.

The appeals were heard by FALCONBRIDGE, C.J.K.B., RIDDELL, LATCHFORD, and KELLY, JJ.

H. S. White, for the third parties, appellants.

T. N. Phelan, for the defendant, appellant and respondent.

A. G. Ross, for the plaintiffs, respondents.

RIDDELL, J., delivering the judgment of the Court, said that the third parties, a firm of Toronto brokers, not members of the Stock Exchange, offered the defendant 50 shares of Royal Bank stock at 202—the defendant did not accept, but said he would see and let the brokers know. Instead of accepting or rejecting the offer, the defendant wrote to the plaintiffs, a firm of broker-dealers in Montreal: "I will sell 50 shares Royal Bank at 206. Please wire if you have a buyer, on receipt hereof." The plaintiffs telegraphed at once, treating this as an offer to sell to them, and the defendant then endeavoured to accept the offer made the previous day by the third parties. They refused to supply the required stock, and the defendant did not carry out the sale to the plaintiffs.

Had the communication above set out stood by itself, it was possible that no contract of sale by the defendant to the plaintiffs could have been found, as the offer might be considered as being made to some customer of the plaintiffs to be found by them. But the offer was ambiguous; and the parties, both offerer and acceptors, in subsequent correspondence and otherwise, treated the first communication as an offer to sell to the plaintiffs. That interpretation was possible, and it should be adopted, as it was

the contemporaneous interpretation put upon it by the parties themselves.

Appeal of the defendant dismissed with costs.

No opinion was expressed as to whether the third party proceeding was regular and such as contemplated by the Rules.

Dealing with the appeal on the merits, an offer for the sale of anything must be accepted, if at all, within a reasonable time—what is a reasonable time must depend upon the article offered—where it is of a fluctuating nature the time for acceptance must be short, and an offer remains open for a short time only. An offer made as this was, of such stock, must be considered as no longer open on the following day.

Appeal of the third parties allowed with costs throughout.

OCTOBER 6TH, 1915.

*RE TORONTO R.W. CO. AND CITY OF TORONTO.

Street Railway—Agreement with City Corporation—Construction—Expiry of Franchise of another Railway—Right to Operate upon Portion of Street Released—Submission of Plans to City Engineer.

Appeal by the Corporation of the City of Toronto from a judgment of the Ontario Railway and Municipal Board affirming the right of the Toronto Railway Company to lay tracks and operate their cars upon that portion of Yonge street, in the city, lying between the tracks of the Canadian Pacific Railway and Farnham avenue.

The appeal was heard by RIDDELL, LATCHFORD, KELLY, and LENNOX, JJ.

G. R. Geary, K.C., and Irving S. Fairty, for the appellants.

H. S. Osler, K.C., for the respondents, the railway company.

RIDDELL, J., delivering judgment, referred to the agreement made between the present parties in 1891, printed as schedule A to the Act 55 Vict. ch. 99 (O.); and said that, when the franchise of the Metropolitan Railway Company ran out in June, 1915, the Toronto Railway Company insisted on the right to operate upon the part of Yonge street above described. Whatever conclusion might have been arrived at in the absence of binding authority, this Court was precluded from holding that

the right claimed did not pass—by the decisions of the Court of Appeal and the Judicial Committee of the Privy Council in the Queen street west extension case, City of Toronto v. Toronto R.W. Co. (1905), 5 O.W.R. 130, 132; Toronto R.W. Co. v. Toronto Corporation, [1906] A.C. 117.

The restriction effected by the franchise of the Metropolitan Railway Company being removed during the period of 30 years, the city corporation cannot withhold from the company the exclusive right to operate upon this part of the street in the same manner as upon the other streets of the city.

It was said by the city corporation that the city engineer did not withhold his approval of the plans. Perhaps that might be so if only that was to be considered which took place before the application to the Board; but the proceedings before the Board were a sufficient submitting of the plans to him under clause 12 of the conditions of the agreement (p. 908 of the Statutes of Ontario for 1892).

The appeal should be dismissed with costs.

LATCHFORD and LENNOX, JJ., concurred.

KELLY, J., also concurred, for reasons stated in writing.

Appeal dismissed with costs.

OCTOBER 8TH, 1915.

SMITH v. SMITH.

Parent and Child—Son Working for Father on Farm—Wages—Presumption—Rebuttal—Contract—Evidence.

Appeal by the defendant from the judgment of FALCONBRIDGE, C.J.K.B., 8 O.W.N. 615.

The appeal was heard by MEREDITH, C.J.O., GARROW, MACLAREN, MAGEE, and HODGINS, JJ.A.

J. H. Spence and C. S. Cameron, for the appellant.

H. G. Tucker, for the plaintiff, respondent.

THE COURT allowed the appeal to the extent of reducing the amount of the plaintiff's judgment to $750; no costs of the appeal to either party.

BRITTON, J., IN CHAMBERS. OCTOBER 4TH, 1915.

HIGH COURT DIVISION.

REX v. BORROR.

Municipal Corporations—Transient Traders By-law—Conviction —Justice of the Peace—Jurisdiction—Absence of Evidence of Offence against By-law.

Motion to quash a conviction of the defendant for an alleged violation of a transient traders by-law of the City of Stratford. The conviction was made by a Justice of the Peace for the County of Perth, on the 3rd August, 1915; the defendant was found guilty of conducting the business of a transient trader without taking out the necessary license therefor; and he asked to have the conviction quashed and the fine and costs imposed remitted, upon the ground that the Justice had no jurisdiction because there was no evidence that the defendant did sell merchandise in the city.

The motion was heard at the London Weekly sittings.
G. S. Gibbons, for the defendant.
J .J. Coughlin, for the complainant.

BRITTON, J., said that, upon the admitted facts, there was no evidence of a sale by the defendant in the business as a transient trader in Stratford. The defendant was sent by his employers, the Columbus Oil Company of Ohio, to deliver oil that they regarded as sold oil. The defendant was not authorised to bargain or to increase the quantity of oil to be delivered or to reduce it. Orders had been given—not in Stratford—and the defendant was to deliver only in accordance with those orders. With the taking of the orders the defendant was not so connected that he could be charged as for a quasi-criminal offence.

Order made quashing conviction, with costs, fixed at $20, to be paid by the complainant. If the fine and costs had been paid, they should be returned to the defendant.

Jw Cw [illegible]

LENNOX, J., IN CHAMBERS. OCTOBER 4TH, 1915.

REX v. AITCHESON.

Municipal Corporations—Regulation of Vehicles for Hire—Police Commissioners' By-laws—Justice of the Peace—Conviction of Owner of Vehicle Plying for Hire—"Loiter about the Streets"—Evidence—Review of Magistrate's Finding—Motion to Quash Conviction—Costs—Mala Fides—License—Application to Licensee of Regulations in By-law Passed while License in Force—Quashing Convictions.

Motion by the defendant for orders quashing three convictions made against him by a Justice of the Peace for three alleged breaches of a by-law of the Board of Police Commissioners for the City of Berlin.

A. B. McBride, for the defendant.
W. H. Gregory, for the complainant.

LENNOX, J., said that the Police Commissioners' by-law (No. 4) in force when the defendant obtained his license provided for cab-stands according to municipal by-laws, and that "no owner or driver shall loiter about the streets with his cab;" and, although the evidence did not shew satisfactorily that the accused did in fact "loiter about the streets," within the meaning of the by-law, upon the occasion complained of, yet it was so essentially a question of fact for the determination of the Justice, that he (the learned Judge) had, after great hesitation, come to the conclusion that he should not interfere with the conviction. The application, upon this branch, should be dismissed; but, as the prosecution in the main was not justifiable nor undertaken in good faith, but with the ulterior purpose of putting the defendant to expense so as to eliminate competition with the civic railway system, the dismissal should be without costs.

The other two convictions were in a different position, depending as they did upon by-law No. 5. The learned Judge was of opinion that that by-law could not be read as governing the action of the defendant or controlling him in the operation of his automobile in any way. The defendant had been operating his vehicle in Berlin under license for hire for three years. For the last license he paid a fee of $10; it was issued to him on the 5th June, 1915; it identified and described the automobile referred to in the evidence; and upon its face provided that it was

to continue in force until the 31st December, 1915. Neither in the license itself nor in the by-law of April, 1913, authorising it, was there any restriction upon the licensee as to the manner in which he should operate his car; the license was an unqualified authority to the licensee to operate his car for hire as and where and when he pleased—Sundays perhaps excepted—upon every street and public way within the city, until the 31st December, 1915; it was not shewn to have been cancelled, revoked, or forfeited; it was in force when by-law No. 5 was passed on the 31st July, 1915; and that by-law could not be read as intended to apply or as applying to or controlling the action of the holder of a then unexpired license, during its currency.

These two convictions should be quashed with costs.

RIDDELL, J., IN CHAMBERS. OCTOBER 7TH, 1915.

*BOWERS v. BOWERS.

Lis Pendens—Motion to Vacate Registry of Certificate—Husband and Wife—Separation Agreement — Conveyance of Land to Wife—Resumption of Cohabitation — Action for Declaration that Conveyance Annulled—Speedy Trial—Undertaking.

Appeal by the plaintiff from an order of a Local Judge vacating the registry of a certificate of lis pendens.

The action was brought by Charles R. Bowers against Rebecca Bowers, his wife, for a declaration that land conveyed by him to her, pursuant to an agreement for separation, was still his—that the conveyance was avoided by the resumption of cohabitation.

J. M. Ferguson, for the plaintiff.
H. S. White, for the defendant.

RIDDELL, J., said that a motion to vacate a certificate of lis pendens should not succeed unless it was made to appear by clear proof that the issue of the writ of summons in the action is an abuse of the process of the Court: Sheppard v. Kennedy (1884), 10 P.R. 242; cf. Jameson v. Laing (1878), 7 P.R. 404.

Whether the conditions of a separation deed come to an end in the event of reconciliation depends upon the intention of the parties, to be ascertained from the terms of the contract as a whole and the circumstances of the particular case: Hals-

bury's Laws of England, vol. 16, p. 452, para. 927. In this case it could not be said that the conditions could not possibly be at an end by the occurrence of the facts mentioned—no judgment should be given until all the available facts have been threshed out.

The defendant was endeavouring to sell the land; and the plaintiff must undertake to speed the trial, as in Sheppard v. Kennedy. If, before the 15th October, the plaintiff files his statement of claim and with it files an undertaking to go down to trial at the next sittings at Chatham, the appeal will be allowed; if not, the appeal will be dismissed; in each case costs in the cause in any event to the successful party.

RE MOISSE—BRITTON, J.—OCT. 4.

Will—Construction—Devise to Grandchildren—Absolute Estate in Fee—Sale of Land by Order of Court—Division of Proceeds—Infants' Shares—Maintenance.]—Motion by the Canada Trust Company, executors of William Moisse, deceased, for an order determining certain questions arising upon the will of the deceased. The testator devised to his grandchildren, the children of his son, all his real estate situate in the city of London, subject to certain provisoes and conditions, which may be summarised as follows: the executors to collect all rents, make necessary repairs, pay taxes and insurance premiums, and pay the balance of the yearly income to the testator's son for his life to help him to support himself and family; should the son die before the youngest grandchild attains 21, the balance of the revenue to be spent for the support of the grandchildren; when the youngest grandchild has attained 21, if the son is dead, or after his death thereafter, the executors to divide the real estate as equally as possible between the grandchildren. The testator died on the 20th January, 1905; the son died on the 26th January, 1907. The executors sold the land and converted the estate into money, pursuant to an order made by ANGLIN, J., on the 15th February, 1909. BRITTON, J., was of opinion that there was an absolute devise to the grandchildren—no gift over. Order declaring that on the true construction of the will the executors were empowered to pay out to the adult grandchildren, and to the infant grandchildren as they should become of age respectively, their shares of the money realised from the sale, and to make such advances to the infants during their minority as may

be necessary for their proper maintenance. Costs of all parties out of the estate. J. B. McKillop, for the executors and adult beneficiaries. F. P. Betts, K.C., for the infants.

RE FISCHER—LENNOX, J.—OCT. 4.

Will—Construction—Bequest of Share of Estate to Widow Absolutely and Further Share if she should Remain Unmarried—Conversion of Estate into Money and Investment in Ontario—Payment of Smaller Share to Widow—Further Share Retained by Executors and Income Paid to Widow—Removal of Widow from Ontario—Corpus to Remain in Ontario.]—Motion by the executors of Joseph Fischer, deceased, for an order determining certain questions arising upon the construction of his will. LENNOX, J., said that the widow was named in the will as executrix, along with the applicants as executors. The widow had removed herself to the State of Wisconsin, and all the children of the deceased were living with her. The property had been converted into money and invested in Ontario with the consent of the executrix, the widow. She was to be entitled to one-third of the estate only if she married again, and to one-half of it only in the event of her remaining a widow. Whether she would ever become entitled to more than one-third of the corpus could not be determined in her lifetime. Being entitled to one-third of the corpus in any event, there was no reason why she should not be paid one-third now. After payment of this one-third, the widow would, while she remained unmarried, be entitled beneficially to the income of the one-sixth share of the estate to which she was contingently entitled. This could not be disposed of by the executors until after her death or marriage. As to the second question, the corpus of the property, beyond the one-third which the widow took beneficially, should not be handed over to her by the resident executors. She approved of the conversion of the estate into money and the investment of the proceeds. The income was being regularly remitted to her half-yearly. It was not the policy of the Court to sanction the withdrawal of trust funds from its jurisdiction, unless in exceptional circumstances; and no sufficient ground had been shewn here. Costs to all parties out of the estate—to the executors upon a solicitor and client basis. J. A. Scellen, for the resident executors. W. H. Gregory, for the widow. E. P. Clement, K.C., for the Official Guardian.

RE VAN EVERY—RIDDELL, J.—OCT. 8.

Will—Construction—Devise—Life Estate — Remainders — Brothers and Sisters Living at Death of Testator—Brothers and Sisters Born afterwards.]—The late James Van Every made his will on the 4th June, 1904, whereby he left all his property in trust for his wife for life, after her death to Chester Smith, and, should Chester Smith die before the widow, all was to be "equally divided between my brothers and sisters." Van Every died; his widow and Chester Smith both survived; and he left brothers and sisters who all survived. By reason of some proposed dealings with the property, it was desired to know whether any others than the widow, Smith, and the brothers and sisters, had any interest in it; and an application was made for the opinion of the Court. RIDDELL, J., said that there was no need to go into the question, sometimes puzzling, as to when the estates in remainder vested and when the class was to be determined. The brothers and sisters now living were those living at the death of the testator; and the number could not be increased so as to bring in other brothers and sisters at the death of the widow or of Chester Smith. A conveyance by all the brothers and sisters would dispose of all the conditional remainder. The learned Judge did not see any room for doubt: but, as all parties joined in the application, costs should be out of the estate. W. M. McClemont, for the widow, Chester Smith, and the brothers and sisters. E. C. Cattanach, for the executors. F. W. Harcourt, K.C., for the infants.