A. L. Davidson, for the widow, contended that the widow was entitled to have the whole estate transferred to her, and that only so much thereof as might not be used by her would go to the children.

OWEN, JUDGE OF PROBATE, now (September 11th, 1909), delivered judgment.

Testator has devised and bequeathed his property as follows (setting out the will). Mr. Milner, on behalf of the children, claims that under the will the widow has only a right to the interest during her life accruing from the corpus of the estate and that the corpus goes in entirety to the children. Mr. Davidson claims that the widow is entitled to the whole estate, corpus as well as interest, and that only such portion as may be unused by her during her life goes to the children.

The words "left unused" in paragraph 1 of the will are synonymous with the words "whatever remains of" in Constable v. Bull, cited in Bibbens v. Potter, 10 Ch. D. 733, and with the words "what shall be left" in Surman v. Surman, 5 Madd. 123, cited in Jarman on Wills, 4th English edition, page 364.

Paragraph 2 of the will gives the widow power to sell and convey testator's real estate, but it does not state for what particular object or purpose. The power of sale does not increase or affect her interest in the estate. She is entitled only to the use of or interest or income accruing therefrom. The corpus goes in entirety to the testator's children. And I so decree.

NEW BRUNSWICK.

BARKER, C.J. JULY 13TH, 1909.

SUPREME COURT IN EQUITY.

EARLE v. HARRISON ET AL.

Mortgagee in Possession — Referee's Report—Exceptions — Accounting—Interest—Rents.

S. B. Bustin and E. T. C. Knowles, for the plaintiff.

Daniel Mullin, K.C., John A. Barry, C. F. Inches, for defendants.