sixth clause of her will, used these words: "As to all the rest, residue, and remainder of my estate, real as well as personal, and wherever situate, I dispose of the same as follows, etc."

Held, affirming the judgment of Ritchie J., that the whole estate was disposed of, and that testatrix did not die intestate as to any part of it.

Testatrix directed her executors to convert her estate into money, and invest and keep the same invested, and, out of the income, first, to pay to her sister C. the annual sum of $300 during her natural life, and, as to the balance, to pay one-half to the wife and children of her son R., and the other half to the wife and children of her son J. W. She added: "It is my will that the whole of the principal fund of the residue of my estate, subject only to the annuity of my sister C. . . shall be paid and applied, and the income thereof shall be paid and applied to and for the use and benefit of the present wife and of the child or children of the survivor of my two sons.

Held, affirming the judgment of Ritchie J., that the portion of the estate out of which testatrix directed the annuity to be paid to her sister, since deceased, should be applied for the benefit of the families of both sons in equal moieties, as provided in the 6th clause. *Re Estate Mary Watt*, 29/100.

VI. (E) Nature of Estates and Interests Created.

25. Joint tenancy—*Words to create—Evidence.*]—Testator devised his farm to his two sons, Joseph and James, their heirs, executors and assigns, under a will that came into operation before the statute with reference to joint tenancy and tenancy in common.

Held, to create a joint tenancy, although the will also contained directions that the two sons should "jointly and in equal shares" pay all testator's just debts.

Held, further, that the fact that the widow had a life interest in a portion of the estate, and lived until after the statute came into force, did not create any distinction as to that portion, as the reversionary interest vested at the same time in all the property, and the surviving brother was owner in fee simple before the Act passed.

Held, further, that the judge was right in refusing to receive evidence of a conversation between the sons to explain the father's will. *Clark* v. *Clark*, 21/378.

On appeal to the Supreme Court of Canada—

Held, reversing the decision of the court below (Taschereau and Gwynne JJ., dissenting), that the provisions for payment of debts and legacies indicated an intention on the testator's part to effect a severance of the devise, and the devisees took as tenants in common and not as joint tenants. (*Fisher* v. *Anderson*, 4 S. C. C. 406, followed).

Also, as to the evidence rejected, that it was properly rejected.

Held, per Gwynne and Patterson JJ., that the evidence might have been received as evidence of a severance between the devisees themselves, if a joint tenancy had existed. *Clark* v. *Clark*, 17 S. C. C. 376.

26. Construction—*Absolute devise with proviso as to property not disposed of by devise—Held void as repugnant in law.*]—The testator devised to his wife, "her heirs, executors, and administrators, to and for her own use and benefit," all and singular his real and personal estate. The will contained a proviso that "in the event of my said wife not having disposed of any of said property, real or personal, in her lifetime, or by her last will and testament," the portion of the estate so remaining undisposed of should vest in trustees, etc.

Held, that testator's wife took an absolute interest in the property devised to her, and that the proviso vesting in trustees the property undisposed of was void as repugnant in law. *Bowman* v. *Oram*, 26/318.

27. Executory devise over — *Widow's right to dower—Words "lawful heirs."*]—Testator, who died in 1859, by his last will made in 1857, devised certain lands to his son J., but in the event of said son dying "without leaving any lawful heirs," then to his great grandson E. P.

Held, that if the devise to J. did not by virtue of the Wills Act, independently of the statute abolishing estates tail, amount to a devise in fee simple, it became a devise in fee simple by virtue of that Act, but that the estate in fee simple so created was defeated through the operation of the executory devise over to E. P. in the event of the death of J. without leaving issue.

Held, also, that while the words "lawful heirs" were equivalent to the word "heirs," and would create a fee simple, a different meaning might be given to the words when used, as here, not to indicate the nature of the estate given, but for the purpose, in a certain contingency, of defeating that estate. *Zwicker* v. *Ernst*, 29/278.

On appeal to the Supreme Court of Canada—

Held, per Taschereau, Sedgewick and King JJ., that notwithstanding the reference to "valid remainder" in the Revised Statutes (1st ser.), c. 112, all estates tail were thereby abolished, and further that, subsequent to that statute there could be no valid remainder expectant on an estate tail, as there could not be a valid estate tail to support such remainder.

Further, that in the devise over to persons in the course of descent from the first devisee, in default of lawful issue, the words "lawful heirs" in the limitation over were to be read as if they were "heirs of his body;" and that the estate of the first devisee was thus restricted to an estate tail and was consequently, by the operation of the statute of 1851, converted into an estate in fee simple, and could lawfully be conveyed by the first devisee.

Per Gwynne and Girouard JJ., that estates tail having a remainder limited thereon were not abolished by the statutes of 1851 or 1864 (R. S. 3rd ser. c. 111), but continued to exist until all estates tail were abolished by the statute of 1865 (28 Vict. c. 2); that as the first devisee in the case in question took an estate tail in the lands devised and held them as devisee in tail up to the time of the passing of the Act of 1865, the estate in his possession was then, by the operation of that statute, converted into an estate in fee simple which could lawfully be conveyed by him. *Ernst* v. *Zwicker*, 27 S. C. C. 594.