In Davies v. Jones and Evans, 24 Ch. D. 190, on an application under the Vendor and Purchaser Act for a decision of the Court as to title, Pearson, J., after referring to the rule as laid down by Lord Mansfield in Oakes v. Cook (Burr. 1686), and by Bayley, B., in Anthony v. Rees (2 Cr. & J. 83), says: "Now, in my opinion, there were two things required, one was that the executors were to carry out all the intentions of the testator and another was that they were to distribute the residue of the estate among the wife and daughters in the manner pointed out; consequently the wife and daughters take nothing absolutely, and the only way in which I can give effect to the whole of the will is by saying that the executors must in the first place raise so much as may be necessary for paying the testator's debts and funeral expenses, and after that they are to provide for the legacies, and then to have in their own hands whatever remains and to divide that between the wife and children in the manner directed by the will. I must therefore hold that they had the legal estate for the purpose of the will, and my opinion is that they can make a good title to the purchaser." In that case there was no devise of the property to the executors as there is in this, but it was held that they took the title to the residuary estate, which they were to distribute, that being necessary to enable them to discharge their duty under the will, and having the title they could give a good title to a purchaser. See Young v. Elliott, 23 U. C. Q. B. 420; Collier v. Walters, L. R. 17 Eq. 252.

It is true that this will contains no direction or express power of sale of the real estate. There is, however, a clearly implied power for that purpose. Such a power would be implied when it was necessary for the trustees in order to carry out the trusts imposed upon them. I have already cited the clause as to the Linden Hall property, and that the testator himself considered that he had conferred and intended to confer such a power as to all of his real estate, appears from the codicil to which I have already referred, by which he directed that his Fredericton houses should not be sold or disposed of during the lifetime of his wife, thereby placing a limitation on the power given by the will. In Glover v. Wilson, 17 Grant 111, Strong, J., says: "It is clearly established by many authorities—amongst which may be cited the following—Forbes v. Peacock, 11 Sim. 152 and 11 M. & W. 637, Ward v. Devon, 11 Sim. 160, Tylden v. Hyde, 2 S. & S. 238; Curtis v. Fulbrook, 8 Hare, 25; Wil-