of which I may die possessed in the manner following, that is to say . . . ." Unless, then, the presence of the residuary clause (or clauses) makes a difference, the devise here is good. It does not appear that there was no residuary clause in Doe Lowry v. Grant, 7 U. C. R. 125, Hickey v. Hickey, 20 O. R. 371, or Doyle v. Nagle, 24 A. R. 162; while it appears that there was not a residuary clause in Re Harkin, 7 O. W. R. 840; and the defective devise was not helped by the absence of a residuary devise in Re Bain and Leslie, 25 O. R. 136.

And there can be no doubt that, if the attempted devise were incapable of taking effect, the land would fall into the residue: R. S. O. 1897 ch. 128, sec. 27, "unless a contrary intention appears by the will." Whatever interpretation be put upon the last clause, I think that this devise is not one "incapable of taking effect," for reasons which are set out in Re Clement. And I am unable upon principle to distinguish the case of a devise of this character followed by a residuary clause and one which is not. The rules laid down in Re Clement do not at all depend upon the leaning of the Courts against intestacy.

I am, therefore, of opinion that the devise is good to pass the land actually owned by the testator.

Costs of all parties out of the land devised—they may be declared a charge thereon.

PLAN.