

whether the power could co-exist in M. with the fee) should not be considered; and (3) that the widow was not entitled to dower; and that the objection was not well taken.

In *Re Cooper and Knowler* (1920), 19 O.W.N. 27, a similar deed was up for interpretation, but in this case the vendor was the grantee in the deed. The limitations were in fee simple, "to have and to hold unto the said grantee his heirs and assigns to and for such uses as the grantee may by deed or by will appoint and in default of appointment then to hold unto the said grantee his heirs and assigns in fee simple." On an objection by a purchaser that the vendor's wife should bar dower, Orde, J., held that the question was too doubtful for a final decision in the absence of the wife, who apparently had not been notified, and refused to force the title on the purchaser. *Re Osborne and Campbell* was not cited on the argument, but on the Judge's attention being called to it subsequently, his Lordship adhered to his opinion for reasons stated in (1920), 19 O.W.N. 123.

Although Orde, J., was of opinion that the fact that the grantee was dead in the one case and living in the other in no way affected the principle involved, it is submitted that it is an important factor in each case.

Taking *Re Osborne and Campbell* first. Although the Judge stated that in the absence of the widow the question as to the interpretation of the deed (on the point whether the power could co-exist with the fee) should not be considered, his Lordship held that the power was well exercised by the will, which certainly seems to involve a determination that the conveyance to M. to such uses as he should appoint was a well drawn conveyance to enable the grantee to defeat dower. It may be that his Lordship intended, not to decide this point, but merely to re-state the argument of the vendor's counsel, following it by his refusal to consider the interpretation of the deed, and declaring that the wife had no dower because she did not appear to claim it. The report is neither full nor accurate enough to ascertain clearly the grounds of the decision.

Assuming, however, that according to his Lordship's dictum the power was well exercised by the will, it does not follow, in the writer's opinion, that dower was defeated. The effect of a conveyance to a grantee in fee simple to such uses as he may appoint, is to vest in him an estate in fee simple by common law, the conveyance so operating: *Savill Brothers Ltd. v. Bethell*, [1902] 2 Ch. 523 at 541. The limitation in fee vests the estate in him, and he is in by the common law; and the addition of a declaration of uses does not add anything to his estate. The utmost that can be said of it is that it may afford an alternative mode of conveyance to the simple grant. Even on the interpretation of the limitations and habendum (in this case) M. was grantee in fee simple, because, by the habendum, in default of appointment the land was limited to him and his heirs. As there was no appointment during his life-time he died seised of a legal estate in fee simple by direct limitation to him and his heirs, and in default of appointment, which estate was capable of being directly devised without resort to the power.

The next step in the case is to ascertain the conditions at the moment after his death. On the moment of his death, his widow became entitled by law to her dower, as he died seised of a legal estate, unless the will was intended