

Per OSLER, J.A.: The presumption is general and is irrebuttable, but the security in question is supportable under the previous promise.

Cole v. Porteous, 19 A.R. 111, distinguished.

Judgment of the Common Pleas Division, 22 O.R. 414, affirmed.

Kappele for the appellant.

Shilton for the respondent.

HIGH COURT OF JUSTICE.

Chancery Division.

FERGUSON, J.]

[March 8.

EVANS *v.* KING.

Will—Construction—Estate tail—Shelley's case—Expression of intention contrary to operation of rule.

The testator, by the third clause of his will, devised certain lands as follows: "To my son James for the full term of his natural life, and from and after his decease to the lawful issue of my said son James, to hold in fee simple; but in default of such issue him surviving, then to my daughter Sarah Jane for the term of her natural life, and, upon the death of my said daughter, then to the lawful issue of my said daughter, to hold in fee simple; but in default of such issue of my said daughter, then to my brothers and sisters and their heirs in equal shares."

By a later clause the testator added: "It is my intention that upon the decease of either of my said children, without issue, if my other child be then dead, the issue of such latter child, if any, shall at once take the fee simple of the devise mentioned in the third clause of my will."

Held, that James took an estate tail according to the rule in Shelley's case, though probably against the real intention of the testator, and the later clause of the will could not be allowed to affect the interpretation of the third clause.

E. D. Armour, Q.C., for the defendants.

J. Bigelow and *A. Bigelow* for the plaintiff.

Common Pleas Division.

Div'l Court.]

[March 4.

CLARK *v.* MCCLELLAN.

Bailment—Storage of wheat—Loss by fire.

A quantity of wheat was delivered by the plaintiff to the defendant, a miller, under a receipt, stating that the same was received in store at owner's risk, and that the plaintiff was entitled to receive the current market price when he called for his money. The wheat, to the plaintiff's knowledge, was mixed with wheat of the same grade and ground into flour. The mill, with all its con-