

true construction of the will of Rebecca Eagle, the material parts of which were as follows:—

“I give and bequeath and devise to my granddaughter Mary Jane McWhirr all that town lot . . . (describing it), subject to a life estate therein to . . . Thomas Eagle, which I grant in said lands to the said Thomas Eagle during his life. I give, devise, and bequeath to my granddaughter Ann Louisa McWhirr my village lot . . . subject to a life estate therein to . . . Thomas Eagle. . . I give and bequeath to my granddaughter Mary Jane McWhirr the sum of \$500 to be paid her when she attains the age of 25 years. . . . And I will and direct that in the event of either of my said granddaughters predeceasing the other and leaving no issue, then that the share of the deceased sister shall go to the surviving sister or the heirs of the surviving sister, but if either of my said granddaughters should die leaving lawful issue, then that the child or children of the deceased should inherit the share of the deceased mother. . . . And I give and devise to my said granddaughters Mary Jane and Ann Louisa all the rest and residue of my estate, real and personal, not otherwise disposed of. And I will and direct that in case both of my said granddaughters should die leaving no lawful issue during the lifetime of the said Thomas Eagle, then and in that case the shares or portions devised to my said granddaughters shall go to the said Thomas Eagle, and that he shall in such event inherit the real and personal property now given and devised to my said granddaughters.”

W. E. Middleton, for the administrator of the estate of Mary Jane Hards.

W. Proudfoot, K.C., for her creditors.

M. C. Cameron, for her infant children.

FALCONBRIDGE, C.J.:— . . . The sale of the lands is confirmed by consent, and the only question is as to the disposition of the money arising therefrom. . . .

The testatrix died 18th December, 1878; Mary Jane Hards died 19th July, 1904, leaving her surviving two children, the above named infants.

It was contended on behalf of the creditors: (1) that the devise was, under the rule in Shelley's case, a devise in fee simple; or (2) that it was a devise in fee simple subject to