

paid yearly to my son Arthur James's widow during her lifetime" (and, after making other small bequests) "the balance thereof to be equally divided amongst my then surviving heirs."

The will was executed on the 20th June, 1895; and the testatrix died on the 6th June, 1898.

Arthur James Russell entered into possession of the devised land, and on the 22nd May, 1899, made a mortgage thereon, as for an estate in fee simple, and in 1906 made another mortgage of similar character. Subsequently he and his daughter, the present applicant, joined in executing a mortgage thereon as for an estate in fee simple. This was said to have been paid off by the applicant.

Arthur James Russell died on the 14th February, 1914, leaving a widow and the applicant, his only surviving child; leaving also brothers and sisters.

Mabel Russell, the applicant, was born in 1892, before the making of the will. Arthur James had another child, who died before the making of the will.

The questions raised were: (a) What estate did Arthur James Russell take under the will? (b) If he took an estate tail, did any act of his bar the entail? (c) Is the land devised to him part of his estate or affected by his will?

L. Davis, for the applicant.

Featherston Aylesworth, for Robert Henry Russell, sole executor of Elizabeth Ann Russell.

W. M. Hall, for the widow of Arthur James Russell.

LENNOX, J., in written reasons for his judgment, after setting out the facts, discussed the principles of construction applicable to wills, and referred to Shelley's Case; *Van Grutten v. Foxwell*, [1897] A.C. 658; *In re Simcoe*, [1913] 1 Ch. 552; *Jesson v. Wright* (1820), 2 Bli. 1, 21 R.R. 1; *Roddy v. Fitzgerald* (1858), 6 H.L.C. 823; *In re Kearn's Estate*, [1903] 1 I.R. 215, 224, 225; *Watson v. Phillips* (1910), 2 O.W.N. 261, and cases cited; *King v. Evans* (1895), 24 S.C.R. 356; *Re Hamilton* (1889), 18 O.R. 195; *Morgan v. Thomas* (1882), 9 Q.B.D. 643; *In re Buckton*, [1907] 2 Ch. 406; *Armour on Real Property*, pp. 322, 324, 398, 399.

The learned Judge expressed the opinion that in using the word "issue" the testatrix meant simply "children," and such children only of her son and their children as survived him; that Arthur James Russell took an estate for life only; that