

SUTHERLAND, J.

JANUARY 17TH, 1913.

RE GOLD AND ROWE.

*Deed—Construction—Grant “in Fee Simple”—Habendum—
Bar of Entail—Act respecting Short Forms of Conveyances
—Act respecting Assurances of Estates Tail.*

Application by Mary T. Gold, the vendor, under the Vendors and Purchasers Act, 10 Edw. VII. ch. 58, for a declaration that a deed of the 8th December, 1906, from W. S. Gold to his wife, the applicant, was sufficient to bar the entail created by the will of David L. Reed.

J. A. McEvoy, for the vendor.

Eric N. Armour, for the purchaser, Frederick T. Rowe.

SUTHERLAND, J.:—One David L. Reed was the owner of the property in question, and died on the 27th September, 1887, having previously made his last will and testament, dated the 30th September, 1885, wherein he devised and bequeathed the said lands to his grandson “William Scott Gold and the heirs of his body.” Letters probate were duly issued on the 7th October, 1887.

On the 8th December, 1906, the said devisee, W. S. Gold, by deed under the Act respecting Short Forms of Conveyances, did grant unto the said party of the second part (in fee simple) the said lands. The grantee was his wife, Mary T. Gold. The habendum in the said deed is as follows: “To have and to hold unto the said party of the second part, her heirs and assigns, to and for her and their sole and only use forever.”

The vendor contends that the said deed was a sufficient one to bar the entail.

The contention of the purchaser, on the other hand, is, that R.S.O. 1897 ch. 122, an Act respecting Assurances of Estates Tail, sec. 29, applies, and that the disposition of the lands under this Act by a tenant in tail could only be effected by some one of the assurances (not being a will) by which such tenant in tail could, before the Ontario Judicature Act, 1881, have made the disposition, if his estate were an estate at law in fee simple absolute. He argues that the words “in fee simple,” following the grant in the deed as indicated, before 1881, would be ineffective without the use of the word “heirs” to pass the fee; and, consequently, the deed in question cannot be said properly to bar the entail.