

# The Ontario Weekly Notes

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HIGH COURT OF JUSTICE.

DIVISIONAL COURT.

NOVEMBER 17<sup>TH</sup>, 1910.

WATSON v. PHILLIPS.

*Will—Construction—Devise to One for Life and to Issue after Decease—Estate Tail—Rule in Shelley's Case—"Without Making a Will."*

Appeal by the plaintiff from the judgment of LATCHFORD, J., ante 120.

The appeal was heard by BOYD, C., SUTHERLAND and MIDDLETON, J.J.

E. D. Armour, K.C., for the plaintiff.

J. R. Meredith, for the defendants.

The judgment of the Court was delivered by BOYD, C.:—By the third clause of the will, the 100 acres in Oro is given to the testator's granddaughter during the term of her natural life, and to her issue after her decease. That, by the application of the rule in Shelley's case, amounts to an estate tail. The intention is that the granddaughter shall enjoy the property during her life, and that it shall go thereafter to her lineal descendants. That is, I think, the primary and controlling intention of the testator.

Then, in the fifth paragraph, it is provided that, if the granddaughter dies without issue and without making a will, the said lot is bequeathed in equal shares to others named (nephews, nieces, and an adopted son of the testator.) The effect of the word "without making a will" is not of such force as to change the meaning of the word "issue" and reduce it to "children."