or income derived from the said lands to his widow during the term of her natural life should she so long remain unmarried, and I hereby bequeath unto her the said one-third of the income of the said lands as aforesaid, and I make the same a charge upon the said lands during the period aforesaid. If, however, my said son shall die without leaving issue then in that case I give devise and bequeath the aforesaid property to my other three children hereinafter mentioned share and share alike." There were other provisions dealing with the case of the death of any of the other children leaving issue.

It was contended on behalf of Austin that the effect of the will was to give him an estate tail, and he had assumed to convey the lands in fee simple to his wife, and the wife joined with him in a conveyance to Percy Maxwell Addison, their only son, reserving to the parents a life-estate. The son Percy had now contracted to sell the lands and had tendered the purchaser a deed from himself and his father and mother. The father and mother had another child, a daughter, who had married and was now dead, leaving issue. The purchaser refused to accept the title, apprehending that the issue of the deceased daughter might be entitled to some interest under the will of her deceased grandfather.

Austin contended that the effect of the will was to give him an estate tail, and the effect of the conveyances to bar the entail, and so destroy not only the right of the daughter and her issue, but the right of any executory devisees.

Reference to Jesson v. Wright (1820), 2 Bligh 1; Roddy v. Fitzgerald (1858), 6 H.L.C. 823; King v. Evans (1895), 24 Can. S.C.R. 356; Van Grutten v. Foxwell, [1897] A.C. 658, 684, 685.

Applying the principles deducible from these cases to the will in hand, the learned Judge had come to the conclusion that Austin took a life-estate only. Had the will simply provided that upon his death the property should go to his lawful issue, it must have been held that an estate tail was created; but the gift after his life-estate was to "his lawful issue and to their heirs and assigns forever." This does not denote the whole inheritable issue taking in course of succession or the whole line of heirs, or heirs of the body, but indicates an intention that those designated as lawful issue should take in fee simple, for the gift is to them and "their heirs and assigns forever."

Reference to King v. Evans, supra; Jarman on Wills, 5th ed., p. 1269; Montgomery v. Montgomery (1845), 3 Jo. & La T. 47.

The will should be read as expressing a gift to Austin for life, and then to his children in fee simple, with an executory devise in the event of his death without leaving children him surviving.

There should be an order so declaring. The applicant should pay the costs of the Official Guardian, and there should be no further order as to costs.