

There are no facts, fortunately, in dispute. The only point for decision is the effect of the deed given to the respondent by his son on 7th December, 1907, on which day the respondent had conveyed to his son the property in question. The son at the same time and in consideration of such deed gave the respondent a rent charge of \$125 a year on the land for his life, with the usual provisions to secure payment. That deed also contained this clause: "And the said party of the first part covenants and agrees with the said party of the second part to provide the said party of the second part with a comfortable home in the dwelling house upon the said lands during the natural life of the said party of the second part." Does this give the respondent any estate in the land? If it does, then he has a freehold interest sufficient to qualify him as reeve of the township.

Much argument was expended on the point, and many cases were cited on both sides.

On behalf of the relator reliance was placed chiefly on *Wilkinson v. Wilson*, 26 O. R. 213; *Millette v. Sabourin*, 12 O. R. at p. 261.

Counsel for the respondent cited a great many more authorities, but argued that *Judge v. Splann*, 22 O. R. 409, was decisive in his favour. In that case the words were, "shall remain and live on said place." There many of the cases were cited and discussed by *Ferguson, J.*, and he held that the words then in question gave a life estate. These words are more like those in the deed in question than those in the cases cited by *Mr. McFadden*. There is also a case which I remember of *Bartels v. Bartels*, 42 U. C. R. 22. There it was decided by the Queen's Bench (*Harrison, C.J.*, *Adam Wilson, J.*, and *Morrison, J.*, affirming the judgment of *Gwynne, J.*), that the words "shall have at all times the privilege of living on the homestead and maintained out of the proceeds of the said estate during their natural lives" gave a life estate in the whole property.

Under these authorities I think the respondent here has a freehold—it may be that under the last cited case he has a right to the exclusive occupation of the house upon the said lands. The words used are unusual and do not follow any decided case exactly. While, therefore, the motion is dismissed, I do not think that there should be any costs.

I have not overlooked *Mr. Justin's* preliminary objection that a former motion having been dismissed with costs owing to defects in the recognisance, it was not permissible to take