

estate or fee simple in the real estate, and whether an absolute or less interest in the personal estate, devised and bequeathed by the said will.

It was not disputed upon the argument that if the widow took an absolute estate in the realty, she was also entitled to the personal estate absolutely. See 25 Am. & Eng. Encyc. of Law, 2nd ed., p. 649; *Butterfield v. Butterfield*, 1 Ves. 154; *Garth v. Baldwin*, 2 Ves. 646; *Elton v. Eason*, 19 Ves. Jr. 78; *Comfort v. Brown*, 10 Ch. D. 146.

It was also conceded upon the argument by Mr. Harcourt that if the clause had contained the word "her" before "heirs," reading "then to her heirs," he could not contend that the widow did not take an estate in fee simple.

The point then remaining to be decided is whether the omission of the word "her" alters the construction that ought to be applied to the will as it stands. He contended that the true construction is that "heirs" in the last line refers to the heirs of the testator and not to the heirs of the wife.

I cannot accede to this view. The earlier part of the devise gives all the estate to his wife, "her heirs, executors, administrators, and assigns," and then follow the words, "to and for her own absolute use and benefit during her natural life and then to heirs."

By giving to the word "heirs," at the end of the clause, the meaning that it refers to "her" heirs, all of the words of the devise and bequest are operative, whereas if "heirs," as there used, refers to "his" heirs, no meaning or force can be given to the word "heirs" firstly used.

It may be that the testator thought he was giving a life estate to his wife with the remainder in fee to their children. And he probably intended to use the word "heirs" to represent her children in the earlier part of the clause, and then he provides how his wife and her children (who are also his children) are to take; his wife for life and then "her heirs," that is, her children, so that "heirs" in the last line refers to her heirs.

The rule in *Shelley's* case then applies. In my view the wife takes an absolute interest in the real and personal property. Costs to all parties out of the estate.