

MIDDLETON, J.

JANUARY 23RD, 1917.

RE THOMPSON AND ROBBINS.

*Will—Construction—Devise—Life Estate—Gift over to “Children”
—Estate Tail—Rule in Shelley’s Case—Vendor and Purchaser—Title to Land—Notice to third Person—Rule 602.*

Motion by the vendor of land, upon an agreement for the sale and purchase thereof, for an order under the Vendors and Purchasers Act declaring invalid an objection raised by the purchaser to the title, and declaring that the vendor can make a good title.

The motion was heard in the Weekly Court at Toronto.

J. H. Fraser, for the vendor.

W. Lawr, for the purchaser.

MIDDLETON, J., in a written judgment, said that the question raised was as to the effect of a devise to the vendor of the lands in question. He claimed an estate tail, and, if he was right, he could make a good title. The devise was contained in the will of the vendor’s father, and was to him “for and during the term of his natural life and thereafter if my said son leaves children of his body or their issue him surviving then to said children in equal shares absolutely the child or children of any deceased child of my said son to stand in the place of his her or their parent and to take his her or their parent’s share but no more but if my said son leaves no child or children or their issue him surviving”—then over.

It was contended that the rule in Shelley’s case applied. This could only be so if the word “children” could be regarded as meaning “heirs of his body.”

Prima facie the rule has no application when, after a life estate, there is a gift to children, but it may be found that the testator has used the word “children” as equivalent to the word “heirs” or “heirs of his body.” Here it was clear from the will that the testator had carefully chosen the words used, and that they must have their natural signification.

So clear is the distinction between a gift for life and after the death of the life-tenant to the children, and a gift for life and after the death of the life-tenant to his heirs or the heirs of his body, that when some other word such as “issue” is used, which is regarded as ambiguous, the discussion is whether the ambiguous