

tation equivalent to 'heirs of the body,' " proceed largely upon the fact that the word "issue" is a more flexible expression than "heirs of the body." . . .

Here not only have we the words "heirs of the body," but the expression "in fee simple" is not immediately super-added to them, but follows after the appended words "and their heirs and assigns." . . .

[Reference to VanGrutten v. Foxwell, [1897] A. C. at pp. 662, 663, 670, 680, and Roddy v. Fitzgerald, 6 H. L. C. 877.]

After a careful consideration of King v. Evans, my opinion remains unchanged that the effect of the devise under consideration is to create an estate tail.

FEBRUARY 16TH, 1905.

DIVISIONAL COURT.

CLIPSHAM v. TOWN OF ORILLIA.

Municipal Corporations—Statute Authorizing Town to Erect and Operate Electrical Works — Damage to Lands by Erection of Dam—Temporary Structure — Independent Contractor — Control by Corporation — Maintenance of Dam by Corporation—Evidence of—Navigable River—Unlawful Act—Nuisance—Abatement—Request.

Appeal by defendants from judgment of ANGLIN, J., 4 O. W. R. 121, in favour of plaintiff for \$75 damages for loss sustained by flooding of lands by reason of a dam.

The appeal was heard by BOYD, C., MEREDITH, J., MAGEE, J.

E. F. B. Johnston, K.C., and D. Inglis Grant, Orillia, for defendants.

F. E. Hodgins, K.C., and T. E. Godson, Bracebridge, for plaintiff.

BOYD, C.—The main cause of action relied on by plaintiff does not exist, according to the unappealed findings of Anglin, J. His claim was thus, substantially, that his land was flooded in the spring by reason of two dams put in the river by the contractor for the town of Orillia, which became the property of and were controlled by the municipality when