

ing her life, and that there was a gift over of only so much of the personal property as was in the possession of the widow at the time of her death.

The testator also directed that certain lands should at the decease of his wife be sold, and the proceeds divided among his daughters, and that if any one or more of the daughters should "be deceased before receiving her or their interest or share" her or their heirs should inherit the same; and if she have left no legal heir then over. One of the daughters survived her mother, and became entitled to a share, but had not at her own death, actually received the whole of her share. She died unmarried.

*Held*, that the share had become vested at the time of her death, and must be paid to her estate.

The testator, also, devised to one of his sons for his life "and his lawful heirs after him," certain lands, "to have and to hold the same during his natural life, and subject to this express condition, that he shall have no power to sell . . . the above real estate, but shall transmit to his lawful heirs unimpaired if he shall have any . . . and should he fail to have any lawful heirs, the said lands shall at his decease be sold, and the proceeds equally divided among the other legatees."

*Held*, that the son took the fee under the rule in *Shelley's case*: and the restraint an alienation was invalid.

*Cleaver*, for executors. *Washington, K.C., F. Ford, W. T. Evans, J. W. Bicknell, K.C., F. W. Harcourt*, for other parties interested.

Trial—Street, J.]

[June 26.

CUMMINGS v. TOWN OF DUNDAS.

*Municipal corporations—Non-repair of highway—Street carried away by natural stream—Liability.*

Without any fault on the part of the defendants a rapid, natural stream running through the town changed its course, and in so doing carried away part of the street upon which certain lands belonging to the plaintiff were situated.

*Held*, 1. The defendants were not bound to replace it under their statutory duty to repair highways. What would be required would be the building of an entirely new road bed, not the repair of an existing one, and this would be impossible until the stream was first diverted from its course and restored to its old course.

2. The defendants were not liable for any depreciation in the value of the plaintiff's property resulting from the destruction by the stream of the road in front of it.

*O'Reilly*, for plaintiff. *Nesbitt and Gwyn*, for defendants.