

property unless the petitioner died before the widow and without lawful issue. The testator intended that the petitioner should, if living, take an estate either in fee simple under a devise to him and his heirs or an estate in tail under a devise to him and the heirs of his body. In either case the petitioner can make a good title. *May v. Logie*, 23 A. R. 785, followed.

Order declaring accordingly. No costs.

NOVEMBER 21ST, 1903.

DIVISIONAL COURT.

DUNN v. MALONE.

*Interest—Rate of—Chattel Mortgage—Interest Act, R. S. C. ch. 8—Express Waiver of Provisions of, not Binding on Mortgagor.*

Appeal by defendant from judgment of Judge of County Court of Wentworth in favour of plaintiffs in an action for redemption of a chattel mortgage. On the 6th April, 1901, plaintiffs made a chattel mortgage on their household furniture to one Samuel Bell, of the city of Hamilton, to secure payment of \$125 advanced to them. The interest was to be \$5 a month, and the mortgagors waived the benefit of R. S. C. ch. 8, the Interest Act, and the amending Act of 1900, and declared that the statement in the mortgage of the rate of interest was a compliance with the Acts. The plaintiffs made 12 monthly payments of \$5 each and two payments of \$10 each, in all \$80, on account of interest, between 6th April, 1901, when the advance was made, and 6th August, 1902, when the last of these payments was made, and 9 monthly payments of \$5 each on account of principal. On 29th December, 1901, they tendered the mortgagee \$30 as being enough to satisfy the balance. This was refused, the mortgagee claiming \$80 for principal and \$20 for interest. The mortgage was assigned to defendant in December, 1902. On 10th January, 1903, plaintiffs brought this action and offered to pay the \$30 which they had tendered. The Judge found that no more than the \$30 was due and ordered defendant to pay plaintiffs' costs, the \$30 to be set off against them.

W. S. McBrayne, Hamilton, and M. Malone, Hamilton, for appellant.

K. Martin, Hamilton, for plaintiffs.

THE COURT (STREET, J., BRITTON, J.) held that the Interest Act was passed in the public interest for the protec-