The portions of the deed thus added by the stenographer without any authority, consisted of the habendum . . . "To have and to hold unto the said party of the second part, his heirs and assigns, to and for his and their sole and only use forever, subject nevertheless to the reservations, limitations, provisoes, and conditions expressed in the original grant thereof from the Crown"—and also of the covenants and release numbered respectively 2, 4, 5, and 8 in the first column of the Act respecting short forms of conveyances. . .

Although the grant is to the children without their being actually named, the instrument should, I think, be construed as if they were named. In order to limit an estate in remainder it is not necessary to set forth the actual names: Cruise's Digest, ch. 21, sec. 16. . . .

If the rule in Shelley's case were to apply, whereby Patrick Tully took the fee, there would be no estate in the children charged with the support and maintenance of his widow, for it is not the estate granted to her husband which is so charged, but "the said estate hereby granted to the children," being the estate which the grantor had purported to grant to them "in fee simple as tenants in common."

This express grant of the fee in remainder to the children and the charging of that estate with the support and maintenance of the widow of the tenant for life indicate a clear intent that Alexander P. Tully should take only a life estate. To hold otherwise would defeat the provision in respect of his widow.

I therefore think that, according to the language of the premises of the deed, those children of Alexander P. Tully who survive or predecease him leaving lineal descendants him surviving took the remainder in fee simple as purchasers: Chandler v. Gibson, 2 O. L. R. 442; Grant v. Fuller, 33 S. C. R. 38; Van Grutten v. Foxwell, [1897] A. C. 658.

If effect were given to the habendum . . . it would defeat the grant of the fee simple in remainder to the children. The rule is, when the grantor has by the premises in the deed granted an estate to A. and his heirs, he cannot retract that disposition after using words in the habendum utterly inconsistent with the grant: Myers v. Marsh, 9 U.