

THE
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TORONTO, JUNE 27, 1907.

No. 6

CLUTE, J.

JUNE 14TH, 1907.

WEEKLY COURT.

RE NEWBIGGING.

Will—Construction—Gift of Real and Personal Property to Widow for Life “and then to Heirs”—Fee Simple—Absolute Interest in Personalty—Rule in Shelley’s Case.

Motion by the executor of the will of John Newbigging, deceased, for a summary order determining a question arising upon the construction of the will.

J. C. Elliott, Glencoe, for executor.

C. A. Moss, for David Newbigging.

W. A. McMaster, Toronto Junction, for widow.

F. W. Harcourt, for infants.

CLUTE, J.:—The testator died on 10th March, 1895, leaving him surviving Ellen Newbigging, his widow, and several children. The will contains the following clause: “I give, devise, and bequeath all messuages, lands, tenements, and hereditaments, and all my household furniture, ready money, securities for money, goods and chattels, and all other my real and personal estate and effects whatsoever and wheresoever, unto my beloved wife Ellen Newbigging, her heirs, executors, administrators, and assigns, to and for her own absolute use and benefit during her natural life and then to heirs.”

The executor asks for a construction of the will and to ascertain particularly whether the widow takes a life