the rule in Shelley's case does not apply, under the circumstances.

Reading the whole devise to Harmon together, the effect is that he is to hold the entire estate as trustee, with the right to use the income without being accountable to any one for its expenditure. The testator's design appears to have been to preserve the estate for such persons as would at Harmon's death be his heirs, preserving to him the enjoyment of the income in the meantime.

If this design could only be accomplished by regarding the word "heirs" as embracing the whole series of heirs in a course of devolution, then, in order to give effect to the intention, it might be necessary that the word "heirs" should be read as a word of limitation, and not of purchase. But the operation of the trust is, I think, sufficient to carry the estate to the intended beneficiaries when the period of their ascertainment arrives without resorting to that construction.

It may be that, in view of the directions following the declaration that Harmon is to hold as trustee of his heirs, the latter word ought to be read as meaning "children"—a reading which would not assist the contention made on Harmon's behalf.

The question is one not wholly free from doubt; but, upon the best consideration I can give it, I am unable to say that the judgment appealed from is wrong.

I, therefore, think that the appeal must be dismissed.

The other members of the Court agreed; MEREDITH and MAGEE, JJ.A., giving reasons in writing.

---

NOVEMBER 4TH, 1911.

## *BIGELOW v. POWERS.

*Partnership—Operation of Thresher—Injury to Property of Partner—Contract—Breach—Damages—Negligence—Right of Partner against Partnership and Co-partners—Contribution—Findings of Jury—Unsatisfactory Verdict—New Trial—Costs.*

Appeal by the defendants from the judgment of MAGEE, J., 20 O.L.R. 559, upon the findings of a jury, in favour of the

*To be reported in the Ontario Law Reports.