

With all due deference, we venture to offer some reasons why it appears to us that the court might have reached a different conclusion from what it did. We remark in the first place that the assumption of the Divisional Court that the estates of the tenant for life and the heirs were not of the same quality seems, having due regard to the Statute of Uses, to have been ill-founded. Notwithstanding the words of trust, the estate in remainder was a legal estate in the heirs. If the testator had possessed more technical knowledge he might have directed that H. should hold to the use of B. in trust for H.'s heirs and then the principle to which Lord Herschell refers would have prevented the rule in Shelley's case from taking effect because the life estate would then have been legal and the remainder in the heirs would have been equitable: but, in the case in hand if, as we think, both the estate of the tenant for life and the remainder to his heirs were legal estates, then there seems to be no good reason why they should not have coalesced under the rule in Shelley's case into an estate in fee; Lord Herschell himself says, immediately after the passage above quoted, "If they (i.e. the estates of the tenant for life and that of the heirs) are both legal or both equitable, the rule applies."

And with great respect to the Divisional Court, we submit that if the somewhat subtle construction which the court gave to the word "heirs" in this case in order to oust the rule is tenable, it amounts to a practical revocation of the rule altogether in Ontario. The cases which are referred to in support of that construction, however, seem plainly distinguishable. In *Greaves v. Simpson*, 10 Jur. N.S. 609, the limitation was to John Greaves for life and after his decease "then upon trust for the heir or heiresses at law of the said John Greaves *or his or her heirs or assigns forever*," the words which we have italicised being held by Kindersley, V.-C., sufficient to indicate that the heirs were not to take by descent. He says: "If indeed the court was obliged to decide that the heir took by descent, then indeed the rule in Shelley's case would make it a fee simple to John Greaves, but *the superadded words prevent that.*" So in