Boyd, C.] RE CUTTER. [13 D.L.R. 382.

Wills—Life estate—Remainder over—"Revert."

Where a testator leaves all the residue of his estate to a named person, and then says that on the decease of such person "the unused or unexpended balance shall revert," an apparently absolute gift is cut down to a life estate; if the life tenant be one for whose maintenance the testator was evidently providing, the whole residue may be employed for that purpose, in specie, and if necessary the capital may be encroached upon.

R. G. Smythe, for appellants.

D. Inglis Grant, for Rose A. Cutter.

ANNOTATION ON THE ABOVE CASE FROM D.L.R.

Before the enactments presently referred to, words of limitation were necessary in a will to pass the fee. But the intention to pass the fee might appear from other clear expressions of the will. Thus, a devise to J. D. "for his children" passed a life estate only. *Hamilton* v. *Dennis*, 12 Gr. 325.

After devises in tail to children, and a residuary devise of all property "not herein mentioned," there followed a devise of lands specifically to J. K. and J. S., without words of inheritance. Held, that J. K. and J. S. took estates for life only, and that the reversion passed to the residuary devisees. *Doe dem. Ford* v. *Bell*, 6 U.C.Q.B. 527.

A devise of all the lands that might belong to the testator at the time of his death did not indicate an intention to pass the fee. Nor did a devise to J., provided that if he died before the testator, then to B., give J. more than a life estate on his surviving the testator. *Doe dem. Peddock* v. *Green*, 7 N.B.R. 314.

A reference to "estate" might have indicated that the fee passed; but it must clearly have referred to the testator's interest in the land, and have been directly connected with the devise in question. So, on a devise to a widow of the income of "all my real estate" during her life, and after her death the same lands to go to children to be divided equally amongst them, it was held that even if the word "estate," as used in the devise to the widow, were sufficient to indicate an intention to pass the fee, the word had no relation to the devise to the children, and that they took life estates only. *Doe dem. Whitney* v. *Stanton*, 7 N.B.R. 632.

But a charge imposed upon a devisee of land gave him the fee, no words of limitation being used. *Chisholm* v. *Macdonnell*, 7 N.B.R. 137.

In Ontario, after March 6, 1834, on a devise of lands, "it shall be considered that the devisor intended to devise all such estate as she was seised of in the same land, whether in fee simple or otherwise, unless it appears upon the face of such will that he intended to devise only an estate for life, or other estate less than he was seised of at the time of making the will containing such devise." R.S.O. 1914 ch. 120, sec. 4.