

ANGLIN, J.—It can not be said that, by any explanatory context, the testator has made it clear that in employing the words “heirs of the body” he intended to use them in any other than their ordinary legal sense. The addition of the words of inheritance “their heirs and assigns” does not alter the legal significance of the limitation to which they are appended: *Mills v. Seward*, 1 J. & H. 733. The further words “in fee simple” add nothing to the legal effect of the words “heirs and assigns,” and, following them, must be regarded as purely supererogatory. By the insertion of this unnecessary phrase the testator does not convey an intention that the words “heirs of the body” are to be taken as words of purchase. Neither is such an intention expressed in or fairly deducible from the fact that he uses the words “heirs of her body” in disposing of his residuary personalty, the income of which he had directed his executors to pay to Nancy G. Skinner for life. Devising estates of the same quality, the testator, by the operation of the rule in *Shelley’s case*, must be held to have conferred upon Nancy G. Skinner an estate tail in the lands in question. Reference to *Van Grutten v. Foxwell*, [1897] A. C. 658; *In re Cleator*, 10 O. R. 326; *Evans v. Evans*, [1892] 2 Ch. 173.

Costs to all parties out of the estate.

ANGLIN, J.

DECEMBER 14TH, 1904.

CHAMBERS.

RE HANMER.

Will—Construction—Codicil—Bequest of Life Interest with Power of Appointment by Will—Bequest of Corpus to Legatee in Default.

Motion by Louis E. Hanmer for order declaring the construction of a codicil to the will of Clark Hanmer, whereby his trustees were directed to retain and invest the sum of \$10,000 and to pay the income thereof to the testator’s son, the applicant, during his natural life, and, upon his death, to pay the corpus to such persons as he should by his last will direct.

S. B. Woods, for applicant.

T. J. Robertson, Newmarket, for executors.

ANGLIN, J.—This codicil, taken by itself, gives Louis merely a life interest in the income, with a power of appointment by will, in default of the exercise of which the testator would be intestate as to the disposition of the corpus after Louis’s death.