NOVEMBER 4TH, 1911.

*RE MCALLISTER.

Will—Construction—"Trustee of his Heirs"—Heirs of Living Person—Legal Estate for Life—Equitable Estate in Remainder—Contingent Remainder—Rule in Shelley's Case.

Appeal by Harmon McAllister from the order of a Divisional Court, 24 O.L.R. 1, affirming the order of RIDDELL, J., declaring the construction of the will of John James McAllister, deceased.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, JJ.A.

E. D. Armour, K.C., for the appellant.

I. F. Hellmuth, K.C., for the respondents.

MOSS, C.J.O.:—. . . For the most part the will is couched in language quite sufficiently appropriate and accurate to express in intelligible fashion the testator's intentions and wishes. But, in the concluding sentence of the 4th clause, the draftsman appears to have lapsed into language which, when contrasted with the rest, appears loose and vague. Whatever may have been the testator's intention, in penning it there is a failure to give clear expression to that intention. It almost seems as if it was an afterthought, written by some one, perhaps the testator himself, not skilled in the expression of testamentary desires. The introduction of this sentence has given rise to the whole difficulty. The provisions and directions in the other parts of the will are clear and intelligible. The testator was, it appears, possessed of both real and personal property, and he gave his wife an estate for life in the whole, with certain directions as to the application of some of the funds, and as to sale of the real estate in the discretion of his executors. The remainder expectant upon the termination of his wife's life estate was still to be disposed of, and this was dealt with by the 4th clause, as follows: "Upon the death of my said wife, I give devise and bequeath all my real and personal property whatsoever and wheresoever situate, including the principal money of the proceeds of my real estate (should it be sold) and of the said life insurance or all such stocks, bonds, or securities, should the estate be sold and invested as provided under clause 3 of this will, to my three

*To be reported in the Ontario Law Reports.