

hold the same, with the appurtenances unto the said parties of the second part (trustees), their heirs and assigns forever, to the use and upon the following trusts, namely, first, to lease and demise the said land . . . and out of the rents and profits of said land to pay any rates or taxes that may be levied or become payable upon said land, and the expenses and disbursements incidental to the carrying out of this trust, and to pay the balance of said rents and profits over to the said party of the first part (settlor) for his maintenance and support, annually, without any abatement or deduction whatever, during the remainder of his natural life, and after the death of the said party of the first part, then in trust to convey and assign the said lands to such person or persons as the said party of the first part shall, by his last will and testament in writing executed by him so as to pass real estate in the Province of Ontario, limit and appoint, and in the event of his dying without making such will, then to hold the same in trust for the right heirs of the said party of the first part, according to the laws of descent in Ontario, in fee simple."

William Bower died on 21st February, 1903, without having made a will, leaving as his next of kin a brother and two sisters, and the children of two deceased sisters.

W. S. McBrayne, Hamilton, for the trustees and the administratrix, contended that there was an equitable estate in fee in the settlor by reason of the application of the rule in Shelley's case, and that the property vested in the administratrix at his death in precisely the same manner as if there had been no trust deed: *Farwell on Powers*, 2nd ed., p. 56; *Richardson v. Harrison*, 16 Q. B. D. 85; *Cooper v. Kynock*, L. R. 7 Ch. 398; *In re White and Hyndle*, 7 Ch. D. 201; *Armour on Devolution*, p. 17; *Preston on Estates*, pp. 504, 506.

The next of kin were not represented.

TEETZEL, J.—Upon the authorities cited . . . it is quite clear that the settlor was possessed of an equitable estate in fee simple in the lands described in the trust deed . . . which estate is now, under the Devolution of Estates Act, vested in the administratrix. There being no disposition of the estate provided for under the deed upon the testator's death, the duty is cast upon the administratrix to proceed to realize upon and distribute the estate under the provisions of that Act.

As there appears to be no conflict between the trustees and the administratrix, I do not consider it at present necessary