JOHNSON *v.* LEHR.

4-4442

Opinion delivered July 13, 1936.

WILLS—CONSTRUCTION.—Where a husband, by his will, bequeathed to his wife all his property, both personal and real, for her own personal use as long as she should live, and if, at her death, there should be any left after paying her funeral expenses and debts, it was to be equally divided between his nephew and her heirs that she should name, it was held that the will conferred on the wife an implied power to sell and hence to convey a fee-simple title, and that the heirs mentioned were to take only what remained at her death undisposed of by her in her lifetime.

Appeal from Crittenden Chancery Court; *J. F. Gautney*, Chancellor; affirmed.

R. V. Wheeler, for appellant.

Armstrong, McCadden, Allen, Braden & Goodman and *W. W. Hughes*, for appellee.

HUMPHREYS, J. This is a suit for specific performance of a contract for the sale of 7.98 acres of land described by metes and bounds in the northeast quarter, southwest quarter, section 12, township 6 north, range 8 east, in Crittenden county, Arkansas. The contract provided that appellant would pay appellee $400 an acre for the land upon presentation of his warranty deed and merchantable title thereto. Presentation of the deed and title was made, which appellant refused to accept on the ground that appellee did not have a fee simple or merchantable title to the land. Objection was made to the title of appellee because it originated in the last will and testament of William Emmett Williams, who devised the land to his wife, Maude Taylor Williams, who conveyed

same to appellee, claiming that said will was not effective to vest appellee with a fee simple title to the land. The paragraph which appellant claims did not vest a fee simple title in appellee through his grantor, Maude Taylor Williams, is as follows: "After the payment of such funeral expenses and debts, I give, devise and bequeath unto my beloved wife, Maude Taylor Williams, all of my property, both personal and real, wherever situated or located for her own personal use as long as she may live and at her death should there be any property or moneys left after the payment of her funeral expenses and debts are paid, it is my desire that the residue be divided equally between my nephew, Ernest Bland Williams, Jr., and the heirs of my beloved wife, Maude Taylor Williams, meaning that the entire half (½) of the residue, if there be any, shall go to my nephew, Ernest Bland Williams, Jr., and the other one-half to be given to her heirs that she may designate."

The language of this paragraph is unambiguous and clearly devised the unlimited use, with implied power of sale, of all the testator's property, both real and personal, to his wife, Maude Taylor Williams. There is nothing in the clause to indicate that the testator devised a life estate only in the property to his widow with a vested remainder therein to his nephew and to the heirs of his wife to be selected by her. It is true that the testator devised any residue that might not be used by his widow to his nephew and her heirs to be selected by her, but this was far from vesting in the nephew and her heirs a remainder absolute in the estate. Such remainder as they might acquire under the will was contingent upon his widow dying before she used it by sale or otherwise. The widow's deed to appellee under her implied power to sell the property to pay her husband's debts or for her own personal requirements passes or will pass the fee simple title to appellee when accepted by him.

The implied power of sale is just as effective as an express power to sell would have been. There could not be any question, if express power had been given to sell, that a sale would have passed a fee simple title to any

of the property sold by the widow. The rule in Shelley's Case is not applicable.

No error appearing, the decree of the trial court is affirmed.