Case —

3rd of May 1800 Mary Wight, Widow being seized in Fee of the undermentioned House only by Will of this date duly executed and attested so as to pass Real Estates after desiring that all her just debts and funeral Expences should be paid devises in the following words "Then I give and ~~devise~~ bequeath unto my beloved Sons William Wight and Joseph Wight, and my beloved Daughter Sarah Emerson All that Messuage or Dwelling House situate lying and being at Dudley in County of Worcester with all rights priviledges and appurtenances appertaining or belonging thereto Together with all and singular my real and personal Estate and Effects whatever, to be equally and impartially distributed amongst them share and share alike" and appointed the said Joseph Wight sole Executor of her said Will —

William Wight Joseph Wight & Sarah Emerson survived the Testatrix but William Wight is since dead leaving Issue — John Wight a Grandson of the Testatrix is ~~the~~ her heir at Law —

Did Wm Wight Joseph Wight & Mrs Emerson take an Estate in Fee Simple as Tenants in Common or what other Estate in the House and premises under the above devise, and can Joseph Wight and Mrs Emerson and the real representatives of Wm Wight the Co-Devisee make a good Title thereto to a purchaser without the concurrence of the Testatrix's Heir at Law

I am of opinion that the devisees took an estate in fee simple as tenants in common ~~tail~~ under the will. The testatrix had no other real estate & if the words real estate were not held to pass the reversion in fee in the house they would be void — and no word in a will should be

rejected that can have any construction in
Barry v. Edgworth 2 P. Wms. 523. And it
has been determined that after a devise to one
of land in woods which will only pass a life
estate a general underlay devise of the rest
of the testator's real estate to the same devisee
will carry the wood in fee in the lands before
devised to him. I think therefore that both
Wright & Mrs Emerson & the real representative of
Mr Wright can make a good title without
the concurrence of the testator's heir at law
See Ex v. Abbey Com. 337. Redout v. Pain 3 Atk.
406.

Edward B. Sugden
Linc. Inn, 3d May 1815.

John Cranmer Esq.
Dudley
Angle Hall

for the opinion of
Mr Sugdon –
Etta
W. Sugden

Justice Wright