(State v. Thomas, supra); and should not be so construed as to include costs or expenses incurred in and about the defense of the suit upon its merits, after the dissolution of the attachment. Where the attachment is dissolved and the property released, upon the execution of a bond by the defendant for that purpose, it would be a harsh rule, indeed, that would hold the plaintiff in the suit liable upon his attachment bond, at the instance of the defendant in the suit, for costs, expenses, and attorney's fees incurred by defendant in the defense of the suit upon its merits, regardless of the amount thereof, and the length of time which it might continue, and in which the attachment is no way involved. As State v. O'Neill, 4 Mo. App. 221, and State v. Coombs, 67 Mo. App. 199, are not in accord with the views herein expressed, they are overruled. For these considerations we reverse the judgment, and remand the cause.

GANTT, P. J., concurs. SHERWOOD, J., not sitting.

TALBOTT v. SCHNEIDER.

(Supreme Court of Missouri, Division No. 2. June 15, 1899.)

WILL—CONSTRUCTION—LIFE ESTATE.

Testator devised his home farm to his wife during her life, for a home for her and testator's children, and provided that, if she should die before the youngest child reached its majority, it should not be sold until then, and that it then be sold and the proceeds divided equally between the children. *Held*, that the widow took a life estate, which she might alienate, and which estate was not conditioned on her occupancy of the farm as her home.

Appeal from circuit court, Nodaway county; C. A. Anthony, Judge.

Action of ejectment brought by John A. Talbott against John Schneider. From a judgment in favor of plaintiff, defendant appealed. Reversed.

Wm. C. Ellison, for appellant. Growney & Growney and J. B. Newman, for respondent.

BURGESS, J. This is an action of ejectment by plaintiff to recover the possession of one undivided tenth part of a large tract of land in Nodaway county, of which plaintiff's father, Dr. Perry H. Talbott, was the owner, and upon which he and his wife and children resided at the time of his death, in October, 1880. The petition is in the usual form, and the answer is a general denial. The case was tried to the court, a jury being waived. Plaintiff recovered judgment for one undivided twelfth interest in the land, and $820 damages. Defendant appeals.

Plaintiff is one of the children and heirs at law of Perry H. Talbott, and claims title to the land in question under the provisions of a will duly executed by his father on the 18th day of September, 1880. The provisions of the will bearing upon the issues involved in this litigation are as follows: "First. It is my will that my home farm and personal property be held by my beloved wife during her natural lifetime, for a home for her and my children. * * * Third. Should my wife die before my youngest child becomes of age, it is my will that the property before mentioned shall not be sold until my youngest child becomes of age; it is my will that said property be sold and divided between all of my children equally." Some seven or eight years after the death of Perry H. Talbott, his widow, and the mother of plaintiff, married a man by the name of Draper, and moved to Ohio, where she has since resided. When she left the farm all of the Talbott children were married, except two, viz. Cicero and John, the plaintiff; and all of them had left home, except these two, who were then minors. In 1890 the defendant acquired by purchase the interest of the widow and all of the children who were then of age; the plaintiff retaining his interest, derived from the will of his father, and for which he prosecutes this suit.

Defendant asked and the court refused to declare the law to be as follows: "(1) The court, sitting as a jury, declares the law to be that by the will in evidence the widow of deceased is now seised of a life estate, and the plaintiff is not entitled to recover. (2) The court declares that under the evidence, plaintiff is not entitled to recover. (3) The court declares the law to be that under the will in evidence the life estate is vested in the widow, subject to a trust in the will raised, and the plaintiff is not entitled to recover in this action."

The question is, can the plaintiff, under the provisions of the will, recover, during the lifetime of his mother, the interest in the land devised to him by the will, against defendant, who acquired title from her? It is clear that by the provisions of the will Mrs. Talbott took a life estate in the land, and unless that estate is made conditional upon its use as a homestead by her and her children, by the words, "for a home for her and my children," plaintiff is not entitled to recover in this action, nor will he be during her lifetime. These words do not, we think, qualify the estate; nor was it forfeited because of the fact that she ceased to occupy it as a home for her and her children, or because of the fact that she sold and conveyed her interest therein to the defendant. She was not obliged, at the risk of forfeiting her life estate in the land, to occupy it as a home for her and her children, but the words quoted were only expressive of the wishes of the testator, and in no way imposed as a condition on the life estate granted to Mrs. Talbott the occupancy of the land by her. In discussing a similar subject in 1 Jarm. Wills (5th Am. Ed.) p. 694, it is said: "We are to consider whether, in cases where words are added expressing a purpose for which a gift