

L.R. Ir. 160; Holmested and Langton's Judicature Act, 3rd ed., p. 483.

But here the contract was induced by fraud, and there is a perfect defence to any claim.

It has not been contended, nor can it be contended, that, if the contract was obtained by the fraud of Dillon, the plaintiffs have any cause of action.

The result is, that the appeal should be dismissed. The Chief Justice relieved the plaintiffs of the payment of the defendant's costs, and the plaintiffs might well have been content. They should pay the costs of this appeal. The defendant may apply upon these costs the \$50 paid by Dillon and interest.

Appeal dismissed with costs.

HIGH COURT DIVISION.

KELLY, J.

MAY 26TH, 1913.

RE COOPER.

Will — Construction — Bequest of "all my Cash in Bank" — Moneys Deposited with Loan Company Included — Residuary Bequest to Nephews and Nieces of Brother — Intention of Testator to Make Bequest to Children of Brother.

Motion by the executors of the will of Francis Cooper, deceased, for an order, under Con. Rule 938, determining two questions of construction.

J. R. Code, for the executors.

H. T. Beck, for Barry S. Cooper and his adult children.

J. Tytler, K.C., for Margaret J. Fulton, Annie Fulton, and James B. Fulton.

J. R. Meredith, for the infant Annie K. Cooper.

KELLY, J.:—This application is to have it determined, first, whether, under the direction by the testator, Francis Cooper, to his executors, to pay to his brother Barry S. Cooper "all my cash in bank," Barry S. Cooper is entitled to moneys of the deceased deposited with the Canada Permanent Mortgage Corporation; and, secondly, who are entitled to the residue of the testator's estate.