a question arising with regard to the construction of the will of John Turner, who died in 1892.

The will was made in 1878, and by it he gave his personal estate to his executor, to be converted into money and held "in trust for the sole use benefit and behoof of my dear daughter Elizabeth Ann Sheppard . . . and to be at her sole disposal both as to principal and interest during the term of her natural life . . . and that her sole receipts . . . shall be . . . good and sufficient discharges to my said trustee . . ." This was followed by the provision that if, upon the death of the daughter, leaving children, "all or any of the aforesaid trust funds remain unappropriated by her," it should be divided equally between the children.

The daughter received the whole estate, amounting to about $5,000, many years ago; the executor died in 1900; the daughter lived until 1916, when she died, leaving an estate of upwards of $6,000, which by her will she left to her daughter Effie Amelia Davey.

Elizabeth Ann Sheppard left surviving her another child, Robert Edward Sheppard, who claimed half of what his mother left.

The motion was heard in the Weekly Court at Toronto.

A. E. Watts, K.C., for Robert Edward Sheppard.

J. Harley, K.C., for Effie Amelia Davey.

J. R. Layton, for the executors of Elizabeth Ann Sheppard.

Middleton, J., in a written opinion, referred to In re Walker, [1898] 1 I.R. 5, and Re Johnson (1912), 27 O.L.R. 472; and said that he had come to the conclusion that there was an absolute gift to the daughter—bearing in mind that she had taken over the whole property and discharged the trustee. The property was to be held by the trustee for the sole use of the daughter. She had the right to demand and receive it from the trustee as and when she pleased, for it was to be at her sole disposal, both as to principal and interest during her life, and her receipt was to operate as a sufficient discharge of the trustee. The children would be entitled only to any portion of the trust fund unappropriated by her, remaining at her death. When she demanded and received the trust fund, she appropriated it, so that nothing remained as a trust fund at the time of her decease.

As the entire estate of the testator had been disposed of, there was no fund out of which costs could be paid, and justice would be best served by leaving the parties to bear their own.