

SUTHERLAND, J., in a written opinion, set out the provisions of the will. The testator gave to his "sisters Sarah Jane and Mary Ann and to his niece Katie, for their use as a long as they live, the farm stock, implements, household furniture, farm and its produce or the proceeds from the same, if they think suitable to sell them. The farm is to be sold after their decease in one year's time, and to my adopted niece Mary Alice Georgina Brown I bequeath \$1,000. The rest is to be equally divided among my five nephews and eight nieces" (naming them). "All the residue of my estate not herein before disposed of I give . . . unto Sarah Jane, my sister."

The will was dated the 18th July, 1914, and the testator died on the 27th March, 1915.

The estate consisted of a farm valued at \$19,000; a mortgage for \$2,100; the farm produce, implements, and stock, worth \$3,300.

There was on deposit in a bank the sum of \$2,391.02, subject to a memorandum dated the 18th July, 1914, signed by the testator and his sister Sarah Jane, to the effect that the moneys on deposit were the joint property of the two, "but they may be withdrawn by cheques made by either of us or the survivor of us."

The farm and chattels were not sold by the two sisters and the niece Katie; all three survived the testator, but soon died, and were all dead at the date of this application. One of the nieces also died in October, 1915.

Farm stock and implements do not come under the class of things *quæ ipso usu consumuntur*, and a gift of them for life does not confer on the legatee for life the absolute interest in them; so also as to the household furniture: Theobald on Wills, 7th ed. (1908), p. 647, and cases cited. The two sisters and the niece Katie took a life estate in these chattels.

The clause dealing with the sale of the farm, the payment to one niece of \$1,000, and the division of the "rest," is a distinct clause of the will, and refers only to the farm. The nephews and nieces took only the proceeds of the sale of the farm, after payment to Mary A. G. Brown of \$1,000; and the remainder of the estate passed to Sarah Jane under the residuary clause.

The money in the bank went to the survivor, Sarah Jane: *Re Ryan* (1900), 32 O.R. 224; *Schwent v. Roetter* (1910), 21 O.L.R. 112; *Everly v. Dunkley* (1912), 27 O.L.R. 414, 423, 429; and now belonged to her estate.

Order declaring accordingly; costs of all parties out of the estate.