

est in the estate, she would as executrix take beneficially. This ignores the provision, . . . now found as sec. 58 of the Wills Act, which enacts that as to any residue not disposed of the executor shall be deemed to be a trustee for the persons who would be entitled to the estate upon an intestacy, unless it appears by the will that the executor was intended to take the residue beneficially. The effect of this statute, as applied to this will, is, to compel me to declare that the mother takes in trust as in the case of an intestacy.

Costs out of the estate.

BOYD, C.

DECEMBER 4TH, 1914.

*SHORT v. FIELD.

Infant—Money Paid as Deposit on Agreement for Sale and Purchase of Land—Consideration—Absence of Fraud—Infant not Entitled to Recover.

Action to recover \$200 paid by the plaintiff (an infant) to the defendant on the purchase of a house and land, and for damages for misrepresentation.

The action was tried without a jury at Sarnia.

J. Cowan, K.C., for the plaintiff.

D. S. McMillan, for the defendant.

BOYD, C.:—This action is by the plaintiff, an infant, suing by his father as next friend, in respect of an agreement made by him to purchase from the defendant for \$1,400 a lot of land in Sarnia called and known as lot 501, Confederation street. The dimensions of this lot, which has a house on it, were 40 feet by 60, and it is so described in tax papers and other documents in evidence. The plaintiff alleges that the size of the lot was misrepresented by the defendant as being in effect $47\frac{1}{2}$ by 72; and, for this reason and on account of his infancy, he gave notice to avoid the transaction. His father had been the agent in negotiating the sale and matters connected therewith, and the father had paid on the son's account \$200 as a deposit at the time the contract was signed. The evidence negatives any misrepresentation on the part of the defendant, and shews that the

*To be reported in the Ontario Law Reports.