

SUTHERLAND, J., said that, having regard to the language used in clause (1), ending with the words "in fee simple," the true principle of construction was that given in such cases as *In re Walker*, [1898] 1 I.R. 5, and *In re Jones*, [1898] 1 Ch. 438, lately followed in *Re Miller* (1914), 6 O.W.N. 665, 666; and upon that principle the gift to the wife and daughter was an absolute one.

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

SUTHERLAND, J.

JULY 9TH, 1915.

*RE MULHOLLAND AND VAN DEN BERG.

Will—Attempted Revocation—Invalidity—Title to Land—Vendor and Purchaser.

Motion by the intending purchaser, under the Vendors and Purchasers Act, for an order determining an objection to the title to land the subject of a contract of sale and purchase.

D. Urquhart, for the purchaser.
Grayson Smith, for the vendor.

SUTHERLAND, J., said that the sole question was whether the vendor had shewn a good title to the land in question under the will of John Clark Burnham, who died in 1901—whether the will was or was not revoked by the testator. The will was dated the 28th May, 1885. Some time after its execution, the testator, in the presence of his wife, to whom he had by the will devised and bequeathed all his real and personal property, ran his pen through his signature to the will, and wrote below it: "Hamilton Tp., Jany. 30th, 1894. I hereby revoke this will made by me May 28th 1885;" and wrote, below the words, his initials. Below this, he wrote, "Witness to revoke," and his wife signed her name below these words. Nothing more was done; and, notwithstanding the pen-mark through the signature, it was still plainly legible. Letters probate of the will were granted.

The learned Judge referred to secs. 22 and 23 of the Wills Act in force at the death of the testator, R.S.O. 1897 ch. 128;

*This case and all others so marked to be reported in the Ontario Law Reports.