

that it was their mother's wish or intention that one of the houses devised to them should be conveyed by them to the defendant; nor could it be said that the property was left to them upon the faith of any express or implied promise on the part of them, or either of them, that they would carry into effect such intention. The learned Judge, indeed, believed, rather, that the testatrix never made it plain to her daughters, or either of them, that anything in the nature of a binding obligation to hand over any of the property was being imposed upon them; and that, when she last spoke to them about the matter, her intention was, and was expressed to be, that they should have an absolute right to all her property. Upon that finding, notwithstanding the letter, there was no trust.

Even if the finding ought to be that the plaintiffs knew, at one time, that there was a will leaving the property to them, accompanied by a letter which indicated that they were to hold some of such property for their brothers, the evidence fell far short of what would support a finding that they, or either of them, expressly or impliedly promised the testatrix that they would deal with the property in accordance with the intentions expressed in the letter. The learned Judge also thought that, if the testatrix ever intended that the plaintiffs should be bound to hold one of the houses for or convey it to each of the sons, she changed her mind before she died.

The defendant's case, in so far as it depended upon any secret trust, failed.

Shortly after the death of the testatrix, an agreement was prepared providing for a conveyance by the plaintiffs to the defendant of the house in Lansdowne avenue, and for the release by the other sons to the plaintiffs of any claims which they might have upon the estate; and, upon the assumption that this agreement would be executed by all the parties to it, the plaintiffs put the defendant in possession of the house. The other two sons, however, refused to sign, and the plaintiffs did not execute a conveyance to the defendant, which had been prepared. Their refusal to execute the conveyance was not based upon the refusal of their other brothers to sign the agreement, but upon the failure of the defendant to make certain payments which he had agreed to make. But, whatever position the plaintiffs took, they were entitled, in this action—in which the defendant sought specific performance of the agreement, which, as he said, was in part performed by his being put in possession—to rely upon the fact, which was clearly established, that the agreement was merely part of the general agreement for a family settlement, which never became operative.