have obtained the necessary letters of administration before the trial. Under *Dini* v. *Fauquier*, 8 O. L. R. 712, approved on this point in C. A. in *Johnston* v. *Dominion of Canada Guarantee Co.*, 17 O. L. R. 462, this would have been sufficient. Much as I would like to give effect to the principles of C. R. 312, and to those considerations emphasized in *Sharp* v. *G. T. R.*, 1 O. L. R., at p. 206, I am unable to see how the mistake as to the form of action can be remedied —in view of the time limited for bringing action of this kind.

See *Williams* v. *Harrison*, 6 O. L. R. 685, and cases cited there.

Nothing, therefore, remains, but that this motion be referred to a Judge, who will deal with it under C. R. 261, or in such other way as he thinks best.

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HON. MR. JUSTICE MIDDLETON. MARCH 31ST, 1913.

## RE DAVIES.

4 O. W. N. 1013.

*Will—Construction—Division of Surplus—"Between," Meaning of—Possible Meaning of more than two—Intention as Gathered from Whole Instrument.*

MIDDLETON, J., *held*, that a direction in a will that a surplus be divided "equally between my wife and my said daughters, share and share alike," where there were three daughters, gave the widow a one-quarter share of such surplus, and not a one-half share.

Motion by the executors for construction of will of the late William Davies, Jr., made upon originating notice under Con. Rule 938.

A. M. Denovan for the executors and widow.

F. W. Harcourt, K.C., for the daughters, now all adults.

HON. MR. JUSTICE MIDDLETON:—The testator died on the 22nd September, 1892. By his will a trust fund is created, from which the income is to be paid to the wife until the youngest of the children attains the age of twenty-one years or marries. Upon the youngest attaining age the wife is to receive an annuity of $800. Certain provisions are made for the creation of a residuary trust fund, to be held