The plaintiffs, as executrices and sole beneficiaries under the will of their mother, sought to recover from the defendant, their brother, possession of a house in Toronto, which formed part of the mother's estate.

The defendant was let into possession by the plaintiffs after their mother's death. He set up two defences: (1) that the plaintiffs were trustees of the house for him; (2) that he was put into possession in part performance of an agreement settling a family dispute; and he asked to have that agreement enforced.

The action was tried without a jury at a Toronto sittings.

Hamilton Cassels, K.C., for the plaintiffs.

T. N. Phelan, for the defendant.

ROSE, J., in a written judgment, said that the testatrix died on the 19th March, 1917, leaving a will, dated the 14th August, 1913, by which she gave all her property, after payment of debts, in equal shares to the plaintiffs, her two daughters, absolutely. She also left, with the will, a letter, dated the 25th May, 1914, addressed to the plaintiffs, as follows: "Amy and Maud. This is my wish that you keep this house for a home as long as the boys will help to keep it going and try and be kind to one another when it has to go Amy and Maud Fred Jack will share and share alike with the proceeds the houses on Lansdowne one for Charlie one for Fred one for Jack subject to the mortgage and do try and be kind to one another."

"Charlie" was the defendant.

The first question to be determined was, whether the declaration, in this letter, that one of the houses in Lansdowne avenue was to be for the defendant was binding upon the plaintiffs—whether the facts brought the case within the rule that, "where a person knowing that a testator, in making a disposition in his favour, intends it to be applied for purposes other than for his own benefit, either expressly promises, or by silence implies, that he will carry the testator's intention into effect, and the property is left to him upon the faith of that promise or undertaking, it is in effect a case of trust:" Jones v. Badley (1868), L.R. 3 Ch. 362, 363, 364.

After reviewing the evidence, the learned Judge said that the most that could be taken to be established was, that for some time before their mother's death both the plaintiffs knew that she had made a will by which she had left all her property to them, and that she had written a letter, which they would find with her will, in which she gave some advice or direction for their guidance in dealing with the property disposed of by the will. It was not established that the plaintiffs, or either of them, knew