

in *Farrar v. Farrar's Limited* (1888), 40 Ch.D. 395. In 1910, the profit of \$1,000 inside six months might not have seemed anything very extraordinary. This objection should be overruled.

The costs should follow the agreement of the parties.

ANNING v. ANNING—SUTHERLAND, J.—JUNE 27.

Husband and Wife—Conveyance of Land by Husband to Wife—Oral Agreement that Ownership to Remain in Husband—Death of Wife—Claim of Husband—Evidence—Statute of Frauds.—An issue to determine the ownership of a house and lot in the city of Toronto, conveyed to the plaintiff Charles Henry Anning in 1900, and conveyed by him in 1901 to his wife, who died intestate in 1906. At the time of the death, the property stood in the name of the wife. Some of her children launched an application for partition or sale thereof, when a claim was made by the plaintiff to the sole ownership, under an arrangement (not in writing) made with his wife at the time he conveyed to her. The issue was then directed, some of the children being made defendants, and the father and others of the children the plaintiffs therein. The issue was tried without a jury at Toronto. SUTHERLAND, J., after setting out the facts in a written opinion, said that on the unsupported evidence of a surviving spouse a gift to the deceased spouse might be rebutted: *Green v. Carlill* (1877), 4 Ch. D. 882; but the evidence must be clear and unequivocal: *In re Whittaker* (1882), 21 Ch. D. 657; *Eversley on Domestic Relations*, 3rd ed., p. 301. There was here no written acknowledgment on the part of the wife, and the Statute of Frauds would be a bar to the husband's claim unless it could be established that its operation would be a fraud on him: *In re Duke of Marlborough*, [1894] 2 Ch. 133; *Rochefoucauld v. Boustead*, [1897] 1 Ch. 196; *McLeod v. Lawson* (1906), 8 O.W.R. 213; *Barton v. McMillan* (1892), 20 S.C.R. 403; *Windsor Auto Sales Agency v. Martin* (1915), 33 O.L.R. 354. Upon all the evidence, the learned Judge said, he had come to the conclusion that the issue must be found adversely to the claim of the husband—the property must be held to belong to the estate of the wife. The plaintiffs in the issue to pay the defendants' costs thereof. R. McKay, K.C., for the plaintiffs. E. P. Brown, for the defendants.