

fendants, by the Master in fixing the amount at which plaintiff shall be entitled to redeem. The mortgagees will have no costs of the former foreclosure proceedings. In other respects the usual practice as to costs in such actions as the present will prevail.

Reference to the Master in Ordinary.

ANGLIN, J.

OCTOBER 26TH, 1904.

CHAMBERS.

RE BRAIN.

*Will—Executors—Power to Carry on Business of Testator—  
Sale of Business—Lease of Premises.*

Motion by executors for order under Rule 938 giving directions as to disposal of estate of testator.

B. F. Justin, Brampton, for executors.

W. S. Morphy, Brampton, for J. C. F. Brain.

F. W. Harcourt, for infant.

ANGLIN, J.—In the absence of any provision authorizing the carrying on of the testator's business by his personal representatives, no order can be made sanctioning that course. The will confers no power of sale on the executors and executrix. Under these circumstances, they may take whichever one of two courses they deem most advantageous for the estate. They may sell the chattels and lease the brewery premises until the period fixed for division of the estate, or they may sell the business—chattels and goodwill—as a going concern, giving to the purchaser a lease of the premises until the period of division fixed by the will, with an agreement for sale, if deemed advisable, subject to the approval of the beneficiaries when the infant attains her majority. For this latter purpose the executrix and executors may carry on the business, but only for such time as may be necessary and proper to effect a reasonably advantageous sale. Having regard to the nature of the business, the sale should be soon.

Costs to all parties out of estate.