

SUTHERLAND, J.

FEBRUARY 11TH, 1920.

SHAW v. SHAW.

Will—Construction—Right of Widow to "Reside" in House on Land Devised to Son—Tenancy for Life or during Widowhood—Unnecessary Action—Costs.

Action by Charles Bruce Shaw against Mary Jane Shaw, his father's widow, to recover possession of a large brick house upon his father's farm, subject to the rights of the defendant under the father's will. The plaintiff offered to maintain the defendant in the house as a member of his family or in a separate part of the house; but the defendant asserted a right to occupy the whole of the house during her lifetime.

The action was tried without a jury at Chatham.

J. S. Fraser, K.C., for the plaintiff.

O. L. Lewis, K.C., for the defendant.

SUTHERLAND, J., in a written judgment, said that there were two houses upon the farm, a large brick house, in which the defendant lived with the deceased up to the time of his death, and a small frame house, in which the plaintiff and his wife lived. The father devised to the plaintiff the south-west quarter of lot 24, subject to certain terms and conditions, including the payment of an annuity of \$100 to the defendant and her support, maintenance, food, clothing, and medical attendance, all charged upon the land, and subject also to this provision: "My said wife during her widowhood as aforesaid shall be so supported, maintained, fed, clothed, and medically attended whether she prefers to *reside* in the larger house . . . or in a house elsewhere." The provisions contained in the will for the benefit of the defendant were to be in lieu of dower. The defendant claimed to be entitled to exclusive personal use and occupation of the brick house.

The learned Judge said that the sole question to be determined seemed to be the proper construction to be placed on the word "*reside*" as used in the will.

Reference to *Re Eastman's Settlement* (1898), 43 Sol. Jour. 114, 68 L.J. Ch. 122, and other cases.

In this case the word imported a tenancy for life or during widowhood, and the defendant had the right to reside in or occupy the whole of the brick house during her lifetime unless she desired to remove elsewhere.

The one matter in dispute, the proper construction of the will, should have been determined on an originating motion.

The action should be dismissed with costs.