

sumption that the testator is dealing with his own share in the property.

If one were at liberty to look outside of the will, there is nothing in the surrounding circumstances to indicate that the testator did not intend to make a somewhat liberal provision for his niece, who had become practically an adopted daughter.

In the result, the title of Mrs. Carlton to one-half interest in the property should be declared, and it should be declared that the will does not put her to her election. The accounts should be adjusted; and, if some arrangement cannot be made which is satisfactory to the parties, I may be spoken to as to the provisions which may be proper to secure payment to Mrs. Carlton of her legacy, as the proceeds of the testator's share of the Bay street property ought not to be transmitted to the foreign executor until the legacy is paid. It may also be thought desirable that a judgment in the nature of partition should not be pronounced, though I trust the parties may be able to agree upon some method of realisation without the assistance of the Court.

The costs of all parties in both actions may be paid out of the estate. These costs, however, must not include (so far as Mrs. Carlton is concerned) any costs solely occasioned by her unsuccessful attack upon the conveyance by the brother of his share.

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LAFONTAINE V. BRISSON—SUTHERLAND, J.—FEB. 4.

*Vendor and Purchaser—Agreement for Sale of Land—Mortgage for Part of Purchase-money—Oral Bargain—Term of Mortgage—Evidence—Finding of Fact of Trial Judge—Specific Performance.*—An action by the vendor for specific performance of an agreement for the sale and purchase of land. The agreement was oral. The price for the land and certain farm machinery was \$4,350, of which \$1,250 was paid by the transfer of other property. The balance of the principal, with interest yearly at five per cent. from the 1st February, 1913, was to be secured by mortgage; interest to be paid on the 1st February in each year along with \$100 on the principal, the first payment to be made on the 1st February, 1914. The number of years over which the payments were to extend was in dispute. The Statute of Frauds was not pleaded. The plaintiff and his wife testified that the bargain was, that the defendant was to execute in favour of the plaintiff a mortgage for \$3,100, payable \$100 a year for fourteen years and the balance at the