

to what happened prior to their purchase; and nothing which happened since was in issue in this action.

The action should be dismissed; but it was clearly not a case in which the defendants were entitled to costs; there should be no costs except those directed to be paid by the plaintiffs to the liquidator.

SUTHERLAND, J.

JULY 15TH, 1920.

RE BRENNER.

*Will—Construction—Absolute Gift of whole Estate to Widow—
Subsequent Direction to Executors as to Division among Children
—Effect—Absolute Gift not Cut down—Remainder—Trust—
Right of Widow to Dispose of whole Estate by Will.*

Motion by Matilda Arnold and Louisa Logel, daughters of John Brenner, deceased, for an order determining two questions as to the construction of the will of the deceased.

The motion was heard in the Weekly Court, Toronto.

D. Inglis Grant, for the applicants.

F. W. Harcourt, K.C., Official Guardian, for the infant grandchildren of the testator.

J. E. Jones, for the surviving executors.

SUTHERLAND, J., in a written judgment, said that the testator died on the 30th March, 1914, leaving him surviving his widow, the two daughters who were the applicants; another daughter, Julia Gies, who died on the 26th September, 1914, intestate and leaving her surviving her husband, Conrad Gies, and one son, Frank Gies, now 19 years of age; and the children of the testator's daughter Theresa Arnold, who predeceased the testator, leaving her surviving her husband and three infant children.

The testator devised and bequeathed "everything I possess at the time of my death to my wife . . . and I empower her to sell or dispose of all or any of the . . . real or personal estate at any time after my death, except the following provisoes: My executors shall pay, as soon as conveniently they can after my decease, the sum of \$500 to John K. Brenner . . . In like manner they shall pay the sum of \$200 to the parish priest . . . It is my wish that after the death of my wife or any time before my executors divide, when making any divisions among my children, such divisions shall be equal among all my