

The question of costs is not left to me, and the practice is not for the Judge hearing the "special case" to decide as to costs—that may be done in the action: *Attorney-General v. Toronto General Trusts Corporation* (1903), 5 O.L.R. 607.

I do not deal with the many other questions raised, more or less interesting, more or less important.

RIDDELL, J.

JUNE 20TH, 1912.

RE GORDON.

Executor—Application for Advice—Trustee Act, sec. 65—Con. Rule 1269(938)—Practice—Determination of Validity of Lease Made by Life-tenant—Course to be Pursued by Executor.

Motion by the executors of the will of Isaac Gordon the elder, deceased, for the opinion, advice, or direction of the Court, under sec. 65 of the Trustee Act and Con. Rule 1269(938).

A. A. Craig, for the executor.

C. W. Plaxton, for tenants under a lease made by Henry Gordon.

RIDDELL, J.:—Isaac Gordon the elder devised certain lands to his son Henry, "for himself during his natural life, subject to the payment of" certain legacies, "but in case of my son Henry Gordon's death without issue or without leaving any child or children then it is my wish that the real estate be sold and the proceeds divided equally between my surviving sons and daughters share and share alike" Henry, in 1909, made a lease of the land to C. and A. for a term of five years; and died, without issue, in June, 1911. The executor of Isaac Gordon the elder demanded possession of the land, and the tenants refused, asserting that the lease was good for the term mentioned in it. The executor was advised by his solicitor and believes that the lease was voided by the death of Henry, and that it is his duty to sell the farm as executor.

Instead of taking proceedings to obtain possession of the land, he served upon the tenants a notice of motion "for the opinion, advice, or direction of the Judge, pursuant to sec. 65 of the Trustee Act and Rule 1269 of the Consolidated Rules