

DIVISIONAL COURT.

DECEMBER 9TH, 1909.

MCKINNON v. SPENCE.

*Will — Construction — Devise — Estates for Life — “Family” —
* Tenants in Common — Joint Tenants — Statute of Limitations
— Remainder — Legacies — Improvements — Costs.*

Appeal by the plaintiffs from the judgment of FALCONBRIDGE, C.J.K.B., 13 O. W. R. 186, dismissing the action, which was brought for a declaration as to the true construction of the will of Archibald Spence, and for a declaration that the plaintiffs were entitled under the will to the possession of certain land occupied by the defendants and to other rights under the will.

The operative part of the will was as follows: “I give and bequeath to my . . . wife the sole use of my farm . . . to use as she may think proper until my son (John Spence) has arrived to the full age of 21 years. He is then to get the east of the farm and half of all the property on the farm at that time. They may then work the farm together, or, if my wife is tired of working the place, John is to have the management of the whole farm and is to support his mother during her widowhood and his four sisters until they are of age or married, at which time each of the four girls are to get from the proceeds of my estate the sum of £10 currency, also bed and bedding with comfortable and decent wearing apparel and a good cow. The estate is to educate the family as far as consistent. The real estate to belong to the family as long as any of them are alive and to remain the property of my son’s heirs.”

The will was dated the 2nd May, 1855, and the testator died on the 25th June of the same year. At the time of the testator’s death the son was 11 years of age; the daughters were younger.

The trial Judge found that the defendant John Spence senior (the son of the testator) had been in possession of the farm for 30 years, not accounting for debts and profits, and that the widow and the daughter Martha were not on the land as claiming ownership, but only as being supported under the will.

The appeal was heard by MULOCK, C.J. EX.D., MAGEE and CLUTE, JJ.

E. E. A. DuVernet, K.C., and F. A. McDiarmid, for the plaintiffs.

E. D. Armour, K.C., for the defendant John Spence senior.

A. J. Reid, for the other defendants.