

Had the will drawn a clear line between the functions of the executors and the functions of the trustees, there is no doubt that the testator could have well nominated his friends as his executors and the trust company as his trustee; but he would then have directed the executors, on the realisation of the estate, to hand it to the custodial care of the trust company. Nothing of that kind is found. Everything points in the other direction; and I think it should be so declared.

Upon the argument of the motion I suggested to the parties the desirability of avoiding a somewhat unseemly contest as to the custody of this estate. It appeared to me that the trustees represented by Mr. Dunbar might well consent to have a third trustee appointed who would more particularly care for the interests of those entitled in remainder. This was not acceptable to Mr. Watson; but I again suggest the desirability of seriously considering the adoption of this course.

As I have no jurisdiction over the solicitor who prepared the codicil, his fault must be attributed to the testator, whose estate must bear the costs of this motion.

MIDDLETON, J.

JUNE 30TH, 1914.

RE RISPIN.

Will—Legacies—Insufficiency of Estate to Pay in Full—Abatement—Legacy to Creditor in Satisfaction of Debt—Claim to Priority—Payment of Legacy in Full by Executors—Allowance by Surrogate Court Judge—Appeal—Originating Notice—Determination of Question Arising on Will.

Appeal by Charles Roe from an order of the Judge of the Surrogate Court of the County of Middlesex, upon passing the accounts of the executors of one Rispin, deceased.

T. G. Meredith, K.C., for the appellant.

W. R. Meredith, for the executors.

U. A. Buchner, for Dr. Tisdall, a legatee.

MIDDLETON, J.:—This motion is an appeal from the determination of the Surrogate Court Judge with reference to a payment of a legacy of \$1,500, made by the executors to Dr. Tisdall.