

Appeal from a judgment of Ontario Court of Appeal, 23 O. W. R. 518; 4 O. W. N. 335; affirming a judgment of HON. MR. JUSTICE TEETZEL, 3 O. W. N. 1099.

The appeal to the Judicial Committee of the Privy Council was heard by VISCOUNT HALDANE, L.C., LORD DUNEDIN, LORD SHAW, of Dunfermline. LORD MOULTON, and LORD PARKER of Waddington.

Their Lordships' judgment was delivered by

VISCOUNT HALDANE:—Their Lordships have considered the will and the various codicils made by the testator. The conclusion at which they have arrived is that it is impossible to attach to the codicil of the 20th March, 1909, either of the meanings which are contended for by the appellant. If it is suggested that this codicil was intended to dispose of the whole of the residue which had already been exhaustively dealt with in the will itself, the answer is that the codicil provides that on failure of the issue of Dr. Edward Farrell, what is given by it is to go into the testator's residuary estate. This shews that he contemplated that the disposition of his residue by the will was intended by him to remain unrevoked. If it is, on the other hand, suggested that the testator intended to give Dr. Edward Farrell something by the codicil, and that effect must be given to the intention, the answer is that this something has not been sufficiently indicated by the testator to enable it to be ascertained by a Court of Justice. He purports to dispose of:—"Whatever balance may remain to the credit of my estate whenever the final settlement of the same is made by my trustees, the National Trust Company of Ontario, at Toronto." There is no time defined at which this final settlement is to be made, and it can hardly be conceived that the testator meant to leave the amount given to depend on the discretion of the trustees. Nor, if this difficulty were got over, is it easy to think that he meant that the whole of the income of his residue, reaching a much larger amount than he was giving to other legatees in a similar position to Dr. Farrell, was to go, as has been suggested, to the original residuary legatees until the death of Dr. Farrell's mother, and was then to pass to Dr. Farrell in such a way as to give him the corpus, which in its turn was to come back to the original residuary legatees in the event of his death without