

A construction was sought to determine whether the next of kin of the testator took under the residuary clause, if any such living, and in default the Crown, or whether the executors were entitled to the beneficial interest in the residue. Nowhere else in the will was there evidence of an intention to benefit relatives or next of kin in any way.

The major part of the estate was given to old employees. It was contended on the part of the Crown that the executors took the residue impressed with a trust, and therefore were precluded from benefiting personally; and that, because the reference in the residuary clause was to "my executors," and not to them by name, it was not intended that they should personally benefit.

The learned Judge said that he was unable to see, from the language used, that any trust had been created or declared.

Reference to *Gibbs v. Rumsey* (1813), 2 V. & B. 294; *Read v. Stedman* (1859), 26 Beav. 495; *Higginson v. Kerr* (1898), 30 O.R. 62; *Meagher v. Meagher* (1915), 34 O.L.R. 33, 40.

The words used "to be by them disposed of in such manner as may in their discretion seem best" are wide and comprehensive, and permit the executors to name themselves as beneficiaries. The words give a general and absolute power of appointment in respect of the residue, which they can exercise in their own favour: *Farwell on Powers*, 3rd ed. (1916), p. 18.

Neither the next of kin nor the Crown could call upon the executors to account for the residue of this estate.

Costs of all parties out of the residue.

SUTHERLAND, J.

JANUARY 4TH, 1917.

RE WAUCHOPE.

Will—Construction—Bequest of Money in Bank—"My Account"
—Name of Bank not Correctly Given.

Motion by the Imperial Trusts Company of Canada, administrators with the will annexed of the estate of William Wauchope, deceased, for an order determining a question as to the construction of the will.

The testator, a soldier, died on the 24th April, 1915, on the field of battle. Two letters written by him from military camps to his brothers and sister were admitted to probate as "a soldier's will."