

doubt as the original intention to devise; for if there is only a reasonable doubt whether the clause of revocation was intended to include the particular devise, then such devise ought undoubtedly to stand."

I would, therefore, reverse the judgment appealed from, and make a declaration in harmony with the foregoing, that the executor of Bertha is entitled to share in the corpus of the estate equally with the sons of the testatrix. Costs of all parties out of the estate; those of the executor of the testatrix as between solicitor and client.

HON. SIR WM. MEREDITH, C.J.O., and HON. MR. JUSTICE HODGINS, agreed.

HON. MR. JUSTICE MAGEE:—The Court has to avoid making a will for this lady and must endeavour to ascertain what her own will was from her own language, interpreted in the light which the surrounding facts may when necessary throw upon it.

The will was made in 1889 and the codicil in 1894. By the first clause in the will Mrs. Smith appointed her husband sole executor and trustee, and by the last or 12th clause she empowered him to appoint a successor in the trust, and in default of his doing so appointed her 2 sons Elias and Carl to be his successors in the trusts, but she also authorised her husband to appoint a co-trustee with himself. Five clauses, 2, 3, 4, 5 and 6, made specific bequests of named articles; clause 10 gave the trustee power to make certain classes of investments and for the purposes of the will gave him power to sell, and execute conveyances and documents subject to the 2 eldest sons' approval.

Under clause 5 of the will there was an absolute specific legacy to Bertha of the articles there named. Under clause 7 at her father's death Bertha (like her 3 brothers) would, if living, be enabled to receive or to have expended for her benefit one-fourth interest in the real and personal property received from the estate of Robert Chas. Smith, subject to the proviso that if she died during minority her child would take her share. During the father's lifetime none of the 4 children would derive any income from this R. C. Smith property.

Under clause 8 Bertha (like her 3 brothers) would be entitled at her mother's decease, not later than the date