

Orme one of her executors, and bequeathed him a legacy of \$200. By the first codicil to her will she revoked the bequest of \$200 to Orme and also revoked his appointment as executor, and by the same codicil she appointed James Tracey one of her executors and bequeathed him a legacy of \$100. By a third codicil to her will she revoked the appointment of James Tracey as one of her executors, but did not expressly revoke his legacy, and one question under the will was whether the revocation of his appointment as executor also revoked the legacy. TEETZEL, J., expressed his view as follows: "The general rule is that a legacy to a person appointed executor is given to him in that character, and it is on him to shew something in the nature of the legacy, or other circumstances arising on the will to repel that presumption. The presumption will be rebutted if it should appear either from the language of the bequest, or from the fair construction of the whole will, that the bequest to a person who is named as an executor is given to him independently of that character: Williams on Executors, 10th ed., pp. 1027-30, and cases there cited; also Jarman on Wills, 6th ed., pp. 1623-4. In *Wildes v. Davies*, 22 L.J. Ch. 495, at p. 498, Vice-Chancellor Stuart observes that the Courts had allowed very minute circumstances to take cases out of the rule. Now reading this will and the codicils as one document expressing the testamentary intentions of the deceased, and bearing in mind that when she made the third codicil she had before her the first codicil in which she revoked not only the appointment of Matthew Orme as one of her executors, but also expressly revoked the legacy of \$200 to him, I think the fair inference is that when, in the third codicil, she revoked the appointment of James Tracey as one of her executors and omitted to revoke the legacy to him she intended to leave the legacy to him undisturbed. In other words, it is fair to infer that if she had intended to revoke the legacy to Tracey as well as his appointment as executor, she would have followed the same course as she had taken in the case of Orme's legacy. I, therefore, think that the legacy should be paid." As to the other question submitted, the learned Judge thought that on the authority of *Re Cronin*, 15 O.W.R. 819, the executor was warranted by the terms of the will in setting apart \$100, the amount suggested upon the argument, for the care and maintenance of the burial plot in which the deceased was interred. Costs of all parties out of the estate. C. J. Holman, K.C., for the executors. H. M. Mowat, K.C., for the Brethren and for James Tracey. J. A. Macintosh, for the residuary legatee.