

RE SPINK—MASTEN, J.—JUNE 15.

*Will—Construction—Codicil—Ambiguity—“All my other Property”—“All my other Insurance”—Internal Evidence as to State of Mind of Testator—Testamentary Capacity.*—Motion by Blanche Brody, beneficiary under the will of John L. Spink, deceased, for an order determining a question arising upon the will and codicil, and for a declaration that, under the codicil, dated the 23rd December, 1913, all the property of the deceased, other than certain insurance moneys therein mentioned, was willed to the three daughters of the deceased, under the words of the codicil, “All my other property now goes with my last son dead to my three daughters.” The motion was heard in the Weekly Court at Toronto. MASTEN, J., in a written judgment, said that, in his opinion, the codicil was not ambiguous; that it was effective; and that in effect it altered and revoked pro tanto the provisions of the will made some months earlier. The situation had meantime substantially changed, owing to the death of the son. The moneys available to the mother had changed owing to the amount which came to her upon the son’s death. From the internal evidence of the will itself, the learned Judge was unable to adopt the suggestion that the deceased had not ordinary testamentary capacity; but was of opinion that the deceased’s mind was firm, lucid, and clear. The way in which he dealt with the insurance policies, enumerating them and giving particulars, and the fact that he was fully conscious and aware that in order effectively to change the beneficiaries named in the policies it was necessary for him to refer specifically to the policies themselves, indicated such a strength and clarity of mind on the part of the testator that the learned Judge felt quite unable to yield to the suggestion that when, in the codicil, the testator used the term “all my other property,” he meant “all my other insurance.” That was not possible. Order declaring accordingly; costs of all parties out of the estate. R. J. McLaughlin, K.C., for the applicant. L. Macaulay, for one of the executors. G. H. Watson, K.C., for the other executors, for the executors of the testator’s widow, and for the beneficiaries other than the applicant.