

wife of James W. Allison, with the hope that they will pay over such a sum of money to my grandchildren Merle Pauline Conger and Stephen Harold Conger as they may deem best." Then followed a clause appointing executors.

W. E. Middleton, K.C., for the applicant.

E. C. Cattnach, for the infants.

E. F. B. Johnston, K.C., and G. Grant, for the executors.

MEREDITH, C.J.:—It is argued that the manifest intention of the testator was to make a disposition of the six enumerated properties to some one, and that he has omitted to have written into the will the object of that devise; that for that reason there was an intestacy as to the enumerated properties. . . .

I am not able to agree to that contention. I do not see why any such mistake as is suggested should be attributed to the testator, and it seems to me there is no violence done to the language which he has used, in treating the words "all the residue of my estate not hereinbefore disposed of" as another enumeration of the particulars in addition to those which were described in the written part of the will and numbered from 1 to 6.

Even if it were otherwise, and there were no previous disposition contained in the will, I should doubt whether that would not be the proper view to take of the effect of the will; but in this will there is a preceding effectual disposition of part of the testator's estate. I refer to the direction that the debts and funeral and testamentary expenses are to be paid by the executors, and therefore to add to the enumeration of the properties a description of the residue as the residue "of my estate not hereinbefore disposed of" seems to me to be an accurate description and to sweep in all the estate that had not been disposed of by the paragraph of the will to which I have referred.

The effect of *In re Fraser, Lowther v. Fraser*, [1904] 1 Ch. 726, is, I think, correctly stated in *Theobald on Wills*, Can. ed., at p. 233.

[*Blight v. Hartnoll*, 23 Ch. D. 218, referred to.]

I think that all the property of the testator, real and personal, is included in the residuary gift which this will contains, and there will be a declaration accordingly. Costs out of the estate.