

The trust company now contends that all the testator has done is to revoke its appointment as executor, and that it still continues as trustee. This motion is to have it so declared, and for a declaration as to its rights and duties during the lifetime of Mrs. Cassidy.

Mr. Watson also appears for the daughter and granddaughter, and they desire that the trust company should be the custodian of the assets. No case is made or suggested for the removal of the executors from their office, but the suggestion is that their duties as executors have now been fulfilled, and that the functions of the trust company now arise.

There is no room for doubt that the offices of executor and trustee are in their nature easily distinguished; and there is equally no room for doubt that it is competent for a testator to appoint different persons to hold these different offices. In each case the true inquiry is, whether the testator has used the words in their strict legal significance, or whether he has indicated that the terms have been used in some secondary or colloquial sense, so that one office, and not two, is really indicated.

Turning to the will, I think it is plain that throughout the testator has not intended any distinction. The company is named as "executor and trustee." It is directed as "executor and trustee" to discharge the function of paying debts and testamentary expenses, which properly belongs to the office of executor. It is directed as "executor and trustee" to hold the fund during the lifetime of the daughter and granddaughter, and ultimately to divide the proceeds. This all properly belongs to the office of trustee. When the will is varied by codicil, his executors were directed to keep the fund invested during the lifetime of Mrs. Cassidy; but, upon the death of Mrs. Cassidy, it is the "executors and trustees" who are to divide. Then, for some reason, the testator changes his mind, revokes the appointment of the trust company as executor, and appoints instead the personal executors.

I cannot think that the testator intended to create the state of confusion contended for by Mr. Watson, and to mean that as to his Ontario estate—which is practically all that he had—the executors should hold it during the lifetime of Mrs. Cassidy, and that upon her death the National Trust Company should intervene as trustee. Nor do I think it likely that he could have intended that the trust company should have any functions to perform as trustee when he removed it from its position as executor.