

the relief to which the respondents were held entitled. In other words the action was treated as one in which the respondents had sued individually as co-plaintiffs, joining in asserting their causes of action. Their Lordships see no reason for holding that any substantial injustice has been done by the Courts below in proceeding on this footing. The rule of procedure in Ontario does not, in their Lordships' opinion, preclude the Court from amending or treating as amended the pleadings so as to enable relief to be given as though claimed in this fashion. It has been argued for the appellants that because of the original form of the pleadings and the joinder in one proceeding of separate causes of action injustice may have happened by the improper admission of evidence. Their Lordships are, however, unable to find that such a result was brought about, and they think that under the circumstances the procedure adopted in the Courts below was admissible.

They will therefore humbly advise His Majesty that the appeal should be dismissed with costs.

PRIVY COUNCIL.

APRIL 7TH, 1914

RE FARRELL ESTATE.

Will—Construction—Codicil—Bequest of Residue—Later Bequest of "Balance" of Estate—Repugnancy—Desire to Avoid Intestacy—Clear Gift Followed in Preference to Vague—Costs.

Motion for construction of a will and codicil. The testator, by his will, clearly disposed of his residuary estate, making due contingencies against intestacy, which he expressed himself as anxious to avoid. By a later codicil he provided "whatever balance may remain to the credit of my estate, whenever the final settlement of the same is made by my trustees, I direct that the same shall be invested by them and paid over to my grandson E. F., after the death of his mother, and in the case of his death, divided equally between his issue, and if no issue, to go to my residuary estate." On behalf of E. F., it was contended that the codicil was repugnant to the earlier grant of the residuary estate and, therefore, as a latter gift, should prevail.

TEETZEL, J., *held*, that the word "balance" could not be taken to refer to the residuary estate, and that the clauses in the will were not revoked by the codicil, which might, possibly, be ineffective for the lack of a "balance" to which it might apply.

Costs of all parties out of estate, those of trustees as between solicitor and client.

COURT OF APPEAL dismissed appeal from above judgment.

PRIVY COUNCIL *held*, that dispositions of property carefully made by a will, cannot be treated as revoked by a subsequent codicil when the language used therein is ambiguous and indefinite in its directions.

Judgments of Ontario Court of Appeal and Teetzel, J., 23 O. W. R. 518; 4 O. W. N. 335; 3 O. W. N. 1099, affirmed.