

MIDDLETON, J.

JUNE 30TH, 1914.

RE MESSENGER.

Will—Construction—Appointment of Trust Company as “Executor and Trustee”—Revocation by Codicil of Appointment of Executor and Appointment of Individuals as Executors—Effect as to Trusteeship.

Application by the National Trust Company, upon originating notice, for an order determining a question arising upon the construction of the will and two codicils thereto of David H. Messenger, deceased.

G. H. Watson, K.C., for the company, and for the daughter and granddaughter of the testator.

C. L. Dunbar, for the executors named in the second codicil.

MIDDLETON, J.:—A somewhat troublesome question arises on the will of the late David H. Messenger, who died on the 3rd August, 1913. By his will he appointed the National Trust Company executor and trustee of his will. Throughout he speaks of the company as his “executor and trustee.” He directs his “executor and trustee” to pay his debts. His property is then given to his “executor and trustee,” to be held and disposed of by such “executor and trustee” upon certain trusts. The “executor and trustee” shall, after realisation, hold the property during the lifetime of the testator’s daughter, and shall pay her the income. Upon the death of the daughter, if the granddaughter survives, it shall pay her the income, and after her death, leaving issue, her issue is to take. In default of issue, the money goes to charities.

By codicil dated the 14th December, Mrs. Cassidy, the testator’s housekeeper, is given the testator’s house for life. She is also given the income from the testator’s estate within Ontario, for life. The testator then directs his “executors” to invest and keep invested the estate from which the income is to be derived during the lifetime of Mrs. Cassidy, and upon her death these assets are to be disposed of by his “executors and trustees” in the manner provided for by the will.

By a subsequent codicil, dated the 21st October, 1907, the appointment of the National Trust Company as “executor” is revoked, and, instead, two personal friends are named as executors. Save as to this, the will and former codicil are confirmed.