

HON. MR. JUSTICE MIDDLETON:—The late Hugh McKay died on the 3rd of July, 1897, leaving an estate of upwards of sixty thousand dollars, personalty. He left him surviving his widow and eight children, all the children being at that time infants. Since his death two of the children—Gordon Alexander McKay and Nellie Irene McKay—have died, while yet infants and unmarried.

By his will dated in September, 1896, the testator devised all his property to his executors upon trust to get the same in and to invest and hold it upon the trusts set forth.

The various trusts mentioned are so ill-defined, confused and contradictory, that it is impossible with any certainty to grasp what was in the mind of the testator.

He first directs that from the moneys realized, \$35,000 be set apart, and thereout and out of its accumulations be paid to the wife for five years, an annuity of \$1,500, for the next five years an annuity of \$1,200, and during the rest of her life an annuity of \$1,000. Upon her death or re-marriage this fund "is to become part of and to form the residue of my estate." The annuity is to be used by the wife in the maintenance of herself and such of the children as shall elect to reside with her; and upon her death "the above sums" are to be paid to the guardian named for the maintenance of any infant children until they attain age.

By the next clause of the will, the fifth, the "remainder" of his estate is to be divided into as many parts as he shall have children living at the time of his decease; and these shares are to be invested, the interest arising to be paid to each daughter, when she attains the age of 21, and to the son when he shall attain 27. But in case of the sickness of any of the children, the trustees are to have power, if they deem proper, to pay for the medical and other attendance; the amount so paid to be deducted "from the residue of my estate, and in the event of any child electing to enter a profession or to attend a university the trustees may provide from the residue of my estate, and charge to the interest of such child sufficient money for the aforesaid purpose." Each daughter is also to have \$400, and each son \$500 when married, "such sums to be deducted from the residue of the estate."

By the sixth clause the principal sum invested for each son and daughter is given "to their issue, if any;" but in the event of any son or daughter dying without issue the