

MIDDLETON, J. APRIL 18TH, 1913.

RE SMITH.

Will—Construction—Codicil—Substituted Legacy to Daughter—Annuity—Income—Corpus—Division of Estate—Decease of Daughter—Right of Daughter's Representative to Share of Corpus.

Motion for an order determining certain questions arising upon the construction of the will (and a codicil thereto) of Emma Josephine Smith, deceased.

R. J. McLaughlin, K.C., and S. S. Smith, for the executors.
E. D. Armour, K.C., D. C. Ross, and A. H. Beaton, for Elias Smith, Carl Smith, and Vernon Smith.
C. A. Moss, for Dale M. King.

MIDDLETON, J.:—The testatrix died on the 9th August, 1896, having made her will on the 19th October, 1889, and added a codicil on the 16th July, 1894. She left surviving her husband, three sons, and one daughter. The daughter was the youngest member of the family. At the time of the making of the will, she was about ten years old, and at the time of the codicil about fifteen.

The will itself presents no difficulty. It is a well-drawn document, prepared by a solicitor. The testatrix, after some minor gifts, divides her estate into two parts: the first covering property recently transferred to her by the trustees of the estate of the late Robert Charles Smith. A deed is produced dated the 6th August, 1889, which was very shortly before the date of the will, shewing that certain Port Hope property is what is so designated. This property is dealt with by clause 7 of the will. It is given to the husband, the executor, in trust, to receive the income for his own use during his life. After his death it is to be equally divided among the children, to be transferred to them after the death of the husband as they respectively attain age. The income—presumably after the husband's death—is to be used for the maintenance of any child under twenty-one. If any child dies before attaining age, leaving a child or children, such issue shall take the parent's share.

By clause 8, furniture, books, etc., are to be divided among the children.

By clause 9 the residue of the property of the testatrix is dealt with. This consisted of some Toronto property, of very