

DIVISIONAL COURT.

MAY 17TH, 1911.

## RE MACDONALD.

*Will—Construction—Residuary Clause—“Distribution of What can be Spared”—Effect of Former Judgment Construing Same Will—Declaration against Intestacy—Vested Estates in Distributees—Capital Invested to Produce Annuity—Death of Annuitant—Accretion to Residue.*

Appeal by three of the daughters and a son of the late John Sandfield Macdonald from the order of MIDDLETON, J., ante 605.

The appeal was heard by MEREDITH, C.J.C.P., TEETZEL and CLUTE, JJ.

E. D. Armour, K.C., and R. Smith, K.C., for the appellants Josephine Langlois and G. S. Macdonald.

R. L. Defries, for the appellants Louise Uppleby and Adele Pemberton.

C. A. Masten, K.C., for the respondent.

B. Osler, for Mrs. H. Spragge.

E. G. Long, for the Toronto General Trusts Corporation.

MEREDITH, C.J.:—This is an appeal by three of the daughters and a son of the late John Sandfield Macdonald, deceased, from the judgment of Middleton, J., dated 18th January, 1911, on an originating motion for the determination of certain questions arising upon the will of the deceased, dated the 31st May, 1872.

The material provisions of the will are set out in the reasons for judgment of my brother Middleton, reported in 2 O.W.N. 605, and it is not necessary to repeat them.

In my opinion the effect of the decree pronounced in the action of Langlois v. Macdonald, on the 28th June, 1875, was to determine the questions now raised, adversely to the contention of the appellants.

Except in so far as the provision of the will that the capital sum necessary to produce the allowance, i.e., the annuity, given to each of the testator's daughters is to be paid after her death to such persons or persons as she may by will direct has that effect, there is no express disposition made of the beneficial interest in the corpus of the estate, save that contained in the paragraph of the will which reads as follows: "I direct that if the estate hereinbefore devised and bequeathed to my said trustees upon the trusts aforesaid prove sufficiently productive