

my executor executrices and trustees aforesaid to be used and employed by them in their discretion or in the discretion of a majority of them in so far as it may go to the maintenance and keeping up my house and premises herein bequeathed to my son James Harold Kennedy with full power and authority to them to make sales of my real estate upon such terms and conditions and otherwise as may be expedient and to execute all deeds documents and other papers necessary for the sale of same and to make title thereto to any purchaser thereof and the proceeds of such sales to devote as in their discretion or in the discretion of a majority of them may seem meet and necessary to keep up and maintain my said residence in the manner in which it has been heretofore kept and maintained and if for any reason it should be necessary that the said residence should be sold and disposed of, I direct upon any such sale being completed that the residuary estate then remaining shall be divided in equal proportions among the several pecuniary legatees under this my will."

The will contains no provision for the payment of debts, and in the several gifts of pecuniary legacies he does not, except as above, expressly mention his executors or trustees, or indicate out of what fund the legacies are to be paid, except as to an annuity to David Kennedy, which he charges upon his estate, and he provides that the legacies shall be free from succession duty.

Having regard to the words in the appointing clause, "hereinafter called my trustees to be the executor and executrices of this my will," and having regard also to the somewhat indiscriminate use of the words "executors," "executor," "executrices," and "trustees," in the subsequent clauses of his will, I think the testator did not contemplate creating two distinct offices in the sense that either of those named could elect to reject the executorial rights and responsibilities and accept only the office of trustee. In other words, I think, taking the will as a whole, that the testator constituted the persons named, or those of them who might accept the whole of the burden, his representatives to perform the combined duties of a trustee-executor.

The plaintiff, as did also Annie Maud Hamilton, by renunciation filed in the Surrogate Court, renounced her right to probate of the will, the effect of which, under the Surrogate Courts Act, R.S.O. 1897 ch. 59, sec. 65, was to cause her rights in respect of the executorship wholly to cease; and the question now is, whether or not such renunciation also deprives her of the