

MIDDLETON, J., IN CHAMBERS.

DECEMBER 24TH, 1920.

RE PATTERSON.

*Will—Construction—Apparently Inconsistent Residuary Clauses—
Reconciliation.*

Motion by the residuary legatees under the will of Bradford Patterson, deceased, for an order for payment over of money to them.

Daniel Urquhart, for the applicants.

W. J. Beaton, for those claiming under the widow of the testator.

MIDDLETON, J., in a written judgment, said that there were two clauses in the will which at first sight appeared to be both residuary and to be in conflict.

The executors were to hold in trust and pay the income to the widow for life, and, if there was not sufficient, were to use the corpus, for her maintenance. On the death of the widow—which had now taken place—a number of legacies were to be paid, and “the balance of my estate” was “to be divided between the Baptist Home and Foreign Missions.” Immediately following this was the other clause, “All the residue of my estate not hereinbefore disposed of I give devise and bequeath unto my said wife.”

Those claiming under the widow’s will invoked the rule that the latter of two inconsistent clauses in the will must prevail.

Reference to *Re Nolan* (1917), 40 O.L.R. 355.

The key-note here was to be found in the latter clause. The widow took nothing which was “hereinbefore disposed of.” That made the gift to her subordinate. The residuary estate was validly disposed of by the earlier gift, so she could not take.

If the Baptist Home and Foreign Missions could not take by reason of any mortmain law, then the ultimate provision as to the residue would prevent an intestacy.

Costs of all parties should be paid out of the estate.