

be allowed to retract her renunciation of the right to probate of the said will?

(3) Has the plaintiff any interest in the residuary estate of the testator which would entitle her to maintain so much of the action as is not embraced in paragraphs 15 to 23?

E. D. Armour, K.C., for the defendant James H. Kennedy, W. Proudfoot, K.C., and A. J. Russell Snow, K.C., for the plaintiff and the defendants in the same interest.

W. Davidson, K.C., W. A. Proudfoot, W. A. Skeans, and A. J. Anderson, for the other defendants.

TEETZEL, J.:—As to the third question, my brother Latchford, in *Kennedy v. Kennedy*, ante 626, determined that the plaintiff in that action, whose status in reference to the residuary estate is the same as that of the plaintiff here, had no interest in the residuary estate, and could not maintain an action similar to this.

It was agreed upon the argument that upon this question I should pro forma follow the decision of my learned brother, and declare that the plaintiff, and those defendants who, like the plaintiff, are pecuniary legatees under the will, are not entitled to any interest in the residuary estate, and are not entitled to make the claims in reference thereto which the plaintiff is making in this action.

As to the first question, the testator by his will appointed his executors, in this language: "I appoint my son James Harold Kennedy and my grand-daughters Gertrude Maud Foxwell" (the plaintiff) "and Annie Maud Hamilton, of the city of Toronto, spinsters, hereinafter called my trustees, to be the executors and executrices of this my will;" and in the subsequent parts of his will he refers to them as follows: (first) in the devise of property known as "the Foxwell estate" and the goods and chattels thereon, "to my said trustees in trust" for the benefit of his son Joseph Hilton Kennedy, to permit him to use, occupy, and enjoy the same for his natural life, "or as they in their discretion may see fit," etc.; (second) in a gift of two pictures of the late Mr. Howard, he directs that they shall be sent or given "by my executors and trustees aforesaid" to his sons, etc.; (third) in the gift of his personal clothing, he directs "my executor and executrices" to divide them; and (fourth) in the disposition of his residuary estate, the subject matter of this action, where his language is: "The rest residue and remainder of my estate both real and personal I give devise and bequeath to