

"I give devise and bequeath all the rest of my estate to my executor in trust to pay to my wife during her life the income derivable from it and at her death to have the estate divided into eleven equal portions one such portion to be paid to my grandson John George Drummond and two portions to each of my children Alfred Pearce Robb Edward George Robb Alexander McNab Robb Davina Galbraith Menzies and Sophia L. J. Robb."

A codicil to the will was, so far as material, as follows:—

"As my wife has died before me I wish my life insurance to be collected and paid to my daughter Sophia and my son Alexander two-thirds of the money to my daughter and one-third to my son.

"The money belonging to my estate and other property not disposed by my will such as the property No. 6 Major St. and money loaned on mortgages I wish the income from these to be paid to my daughter Sophia and to my son Alexander one half to each till such time as the mortgages are repaid and No. 6 Major St. disposed of when my whole estate is to be divided into five equal portions and paid to each of my children."

The motion was heard in the Weekly Court, Toronto.

E. L. Middleton, for the executors.

J. A. Paterson, K.C., for Davina Galbraith Menzies.

G. A. Archibald, for other adult beneficiaries.

F. W. Harcourt, K.C., for the infant grandchild of the testator.

MIDDLETON, J., in a written judgment, said that the key-note of the codicil was the death of the wife. The insurance money given her by the will was to be divided between the daughter and son.

The other clause was intended to be a new residuary clause taking the place of the residuary provisions of the will, and not as a revocation of all the specific gifts found in the will. It operated upon the money and property not disposed of by the will. The gifts of \$1,000 to the son Alexander and the daughter Sophia thus stood.

The gift of the house to the daughter Sophia was absolute, and she took in fee simple.

The construction of the residuary clause was not discussed. The mortgages were payable at maturity, and *prima facie* the testator intended them to be then paid, and the executors' year was *prima facie* the time within which the house No. 6 Major street should be sold, and thus would be ascertained the period during which Sophia and Alexander would enjoy the income, i.e., net income, for rents must meet the interest and taxes etc.

Order declaring accordingly. Costs out of the estate.