

MIDDLETON, J.

JANUARY 18TH, 1911.

RE MACDONALD.

*Will—Construction—Residuary Clause—“Allot the Distribution of What can be Spared”—Gift of Capital—Effect of Former Judgment Construing the same Will—Declaration against Intestacy—Vested Estates in Distributees—Representatives of Daughter Dying before Realisation of Estate—Capital Invested to Produce Annuity—Death of Annuitant—Accretion to Residue.*

Motion by two daughters of the Hon. John Sandfield Macdonald, deceased, for an order determining certain questions arising in the administration of the estate of the deceased as to the proper construction of his will.

R. L. Defries, for the applicants.

E. D. Armour, K.C., and R. Smith, K.C., for two beneficiaries.

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

M. C. Cameron, for Elias F. Shauer.

MIDDLETON, J.:—The testator died on the 1st June, 1872. The material clauses of the will now in question are as follows:—

“Eighthly, I give, devise and bequeath all the rest, residue and remainder of my real and personal estate of which I may die seised, possessed of, or entitled to, to my said brother, Alexander F. Macdonald, my said daughter, Lilla Macdonald, and the said Donald B. McLennan upon the following trusts, that is to say: to continue to pay to each of my daughters, Josephine and Louise, for life, the annual allowance of eight hundred dollars each, which they are now receiving; to pay my daughter, Lilla, an annual allowance for life of eight hundred dollars and to my daughter, Adele, an annual allowance of six hundred dollars up to and until her marriage, and after her marriage for life the annual allowance of eight hundred dollars; and to pay to my son, Henry, for three years the annual allowance of six hundred dollars; and to pay to my said wife the annual sum or payment of twelve hundred dollars, during her natural life, and to pay for the education, maintenance and ordinary requirements of my son, George; and I direct my trustees, in their discretion, if they find my son, George, deserving of the same, to make such annual allowance to him as to them may seem warranted by the proceeds of the income of my estate,