

THE  
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No. 8

SUPREME COURT OF ONTARIO.

FIRST APPELLATE DIVISION.

DECEMBER 17TH, 1913.

RE SMITH.

5 O. W. N. 501.

*Will—Construction—Codicil—Overriding of Terms of Will by—  
“Supersede”—Meaning of—Income—Share in Corpus—Practical  
Revocation of Will—Inference against—Appeal.*

MIDDLETON, J., *held*, 24 O. W. R. 476, that a codicil giving a legatee a certain annuity superseded the provisions of the will giving her a share in the corpus of the estate.

SUP. CT. ONT. (1st App. Div.), *held*, that the intention of the testator was that the gift of income should be in addition to and not in substitution of the gift of the corpus.

Appeal allowed. Costs of all parties out of estate.

Appeal by Dale M. King as executor of his deceased wife, Bertha Smith, from a judgment of HON. MR. JUSTICE MIDDLETON, 24 O. W. R. 476, construing the will, and a codicil of her mother Emma Josephine Smith.

I. F. Hellmuth, K.C., and C. A. Moss, for the appellant.

E. D. Armour, K.C., and D. C. Ross, for Elias Smith, Carl Smith and Vernon Smith,

R. J. McLaughlin, K.C., for the executors.

The appeal to the Supreme Court of Ontario (First Appellate Division) was heard by SIR WM. MEREDITH, C.J.O., HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MAGEE, and HON. MR. JUSTICE HODGINS.

HON. MR. JUSTICE MACLAREN:—The facts are stated, and a very complete summary of the will given, in the judgment appealed from. In the paragraph summarizing the 9th clause of the will it is stated that the division of the