

signee of one of the next of kin, under which she would have been entitled to attack the whole clause. This was refused, but the judgment was also stated to be without prejudice to any subsequent action. That judgment was simply affirmed by the Divisional Court.

In *Foxwell v. Kennedy*, 24 O.L.R. 189, the status of the plaintiff was precisely that of the plaintiff in the *Kennedy v. Kennedy* case next before-mentioned; and Teetzel, J., simply followed pro forma the judgment of Latchford, J., which the Divisional Court affirmed.

In one of the cases referred to by the learned counsel for the appellant, *Badar Bee v. Habib Merican Noordin*, [1909] A.C. 615, Lord Macnaghten, at p. 619, says: "The result is that it appears that the point raised by this appeal has already been adjudicated upon . . . There is here, as there was in the case of *Peareth v. Marriott*, 22 Ch.D. 182, to which Mr. Levett referred, a decree inter partes on the very same subject." That could not truthfully be said here. The "very same subject" might have been determined in the first, and only in the first, of the three actions to which I have referred, but was deliberately and intentionally not dealt with. See also *Moss v. Anglo-Egyptian Navigation Co.*, L.R. 1 Ch. 108, at p. 115; *Barrs v. Jackson*, 1 Y. & C. Ch. 585, and the remarks upon it of Lord Selborne in *Regina v. Hutchings*, 6 Q.B.D. 304. . . .

The appellant complains of Mr. Justice Teetzel's construction of the residuary clause, and contends that, by virtue of the clause and of the deed poll, he is entitled to the whole of the residuary estate, subject only to the plaintiff's annuity, and to any other charges upon the estate, if any should exist.

The rule of construction, in cases arising under this well-known rule of law, as well as of statutory provision, is well-established, that, in considering a case in which the rule is involved, it is not after-events which should be looked at, but the situation at the beginning, that is, at the death of the testator. In other words, one must be able then to see that the event which is to bring about a final distribution is certain to fall within the period prescribed; if it does not, the gift is void; and the fact that subsequently the event did actually happen within the time is of no consequence.

But, before further considering the legal aspect, it is proper, I think, first to try to find, if possible, what the testator really meant. . . . And this meaning is to be derived from the words of the will itself, in the light of the surrounding circumstances. The Court is at liberty to put itself as nearly as possible in the