

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, JJ.A.

E. D. Armour, K.C., and R. B. Beaumont, for the appellants.

C. R. McKeown, K.C., for the executor.

Shirley Denison, K.C., for the widow.

J. R. Meredith, for the infants.

MOSS, C.J.O.:— . . . A number of questions were submitted and disposed of, but the appeal to the Divisional Court was in respect of one question only, viz., as to the respective shares or interests of two of the testator's sons, Henry Alfred Hunter and David John Hunter, in his residuary estate.

The testator, who describes himself in the wills and codicils thereto as a farmer, was evidently a man of very considerable wealth. Judging from the many parcels of land and the quantity of personal property disposed of in specie, as well as the numerous pecuniary gifts and legacies (amounting to over \$40,000) bestowed upon children, relatives, and others, it is safe to say that the will and codicils disposed of an estate the value of which probably exceeded \$150,000.

It is evident that the disposition of his estate had been the subject of careful deliberation, and that his desire was fully to express his wishes and intentions in regard to the interest or share in his estate to be taken by each beneficiary named by him. A period of more than two years elapsed between the execution of the original will and the first codicil, but the latter shews the same care, deliberation, and fullness of expression. And the final codicil, executed nearly three years after the first, displays similar characteristics. It may fairly be assumed that, in the changed circumstances, the testator gave full consideration and attached due weight to the position and claims of each of the beneficiaries affected by them, and made his subsequent dispositions with all these matters before him. Neither the original will, nor his ultimate testamentary disposition of his estate, appears to indicate equality of division as the governing consideration. Rather does it indicate careful consideration of all the circumstances.

It is to be borne in mind that the ultimate wishes of the testator are to be ascertained, if possible, by a proper construction of the language in which he has expressed them; and these wishes, when so ascertained, constitute his last will and testament. . . .