

for her separate use, free from the control of her husband should she marry, during their respective lives. And upon the death of either of them her share shall go to her children equally if she shall marry and leave children, and if at her death she shall not leave any child then the capital shall be equally divided among her brothers and sisters or their children. If my property shall not prove sufficient to pay all the above sums, then the legacies to my daughters Mary and Harriet and the £1,000 above directed to be invested for their benefit shall be first paid in full, and all the other legacies shall then be paid ratably. If there shall be a surplus of property after providing for all the above sums, then such surplus shall be equally divided among my children, Sophia, William, Robert, Emma, Harriet, and Mary equally. My desire is that the trustees above named shall not in any case be answerable for the failure of any fund in which the moneys may be invested by them, or for any loss whatever which shall not arise from their wilful and wrongful act or default. . . .”

The codicil was as follows:

“It is my intention to build upon the two acres held in trust by Robert for myself for life and for my daughters Harriet and Mary in fee after my death, and in case of my death before the completion of the house, I desire that it may be completed and furnished. . . . And I wish that after my death my executors shall invest enough of my property for Harriet and Mary to make an income of £100 a year to each of them during their lives. Should either of them die without issue before the other, the survivor is then to have the whole income or £200 a year. In case of the death of either of them leaving issue, they are to have the power of leaving by will, whether their husbands be alive or not; upon their death without issue, or without a will if they have issue, the property out of which the income is derived shall go to their brothers and sisters or their issue. This is meant instead of all that is in my said daughters’ favour in my will, and is a revocation thereof. My son William I wish to have £500, to be paid to him by my executors. What is here is to stand prior to everything in my said will.”

On 1st February, 1875, the executors named in the will filed a bill in Chancery and asked for an interpretation of the will and a declaration of the rights of the persons interested in the estate. The bill set forth that the estate had come to their hands consisting for the most part of unproductive lots in Toronto, which they had been unable to sell until shortly before the filing of the bill; that they had been unable to pay the annuities to Harriet and Mary under the