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

Tilley, for appellants.

Hellmuth, K.C., for testator's sons.

Arnoldi, K.C., for testator's married daughter.

White, for the executors.

THEIR LORDSHIPS' judgment was delivered by

HON. SIR WM. MEREDITH, C.J.O.:—The questions raised and the provisions of the will upon which they have arisen are stated in the reasons for judgment of my learned brother; 25 O. W. R. 735.

As to the first question, i.e., the devises contained in paragraphs 12, 13, and 14 of the will, we are of opinion that we should follow the decision of the Court of Appeal in *Re Clowes*, [1893] 1 Ch. 214, and being of that opinion the first ground of appeal fails.

The second and remaining question is as to the effect of paragraph 26 of the will which reads as follows:—

"I hereby give to my daughter, Sarah Frances Barrett, whatever sum or sums of money may be to my credit in any bank or upon my person or in my domicile at the time of my decease for the purpose of enabling my said daughter to meet the immediate current expenses in connection with housekeeping."

No question would probably have arisen as to the meaning of this provision but for the fact that the testator had at the time of his death at his credit in his bank the large sum of $17,200.

It is very probable that if the testator had contemplated when he made his will that so large a sum as $17,200 would be at his credit in his bank at the time of his decease he would have made a different provision as to the disposition of it from that contained in par. 26, but that, in my opinion, affords no reason for putting a construction on the language of the testator different from that which would be placed upon it if the fund amounted to no more than $500.

My learned brother's view was that the legatee is not entitled to the fund absolutely, but that a trust is created, and