

The judgment of the Court was delivered by Moss, C.J.O.:—
The testator died on the 28th October, 1907, leaving him surviving his wife, Mary Biggar Lenz, and his son, Charles Lenz, an infant under the age of twenty-one years, on whose behalf this appeal is being prosecuted. Two sisters, Emma Lenz and Catherine Bowstead, who are beneficiaries under the will, also survived him. John Bowstead, Joseph Dingle, and S. F. Washington, the persons appointed executors, obtained probate of the will. All these persons are represented in this proceedings, but those substantially interested are Charles Lenz, on the one side, and Emma Lenz and Catherine Bowstead, on the other. . .

At the date of the execution of the will there were in existence two policies of insurance upon the testator's life in favour of his wife for the sum of \$10,000; there were also in existence two policies of insurance upon his life in favour of his two sisters for the sum of \$8,000. These policies had been effected by the testator—the \$10,000 being payable to his wife, and the \$8,000 being payable to his sisters in equal shares.

After revoking all former wills and making provision for payment of all his debts and funeral and testamentary expenses, the testator, by the will in question, devised and bequeathed his interest in his house and premises in the city of Hamilton and its contents to his wife, and his cottage and lot on Hamilton Beach to his two sisters in equal shares.

The will then proceeded as follows (clause 5): "I will and direct that all the rest residue and remainder of my estate real and personal . . . be divided into three equal portions (subject to the provisions hereinafter contained as to insurance moneys) and that one portion thereof less the sum of \$10,000 represented by a policy or policies of insurance on my life payable to my said wife if such insurance moneys are paid to her or less such portions of such insurance moneys as shall be paid to her be transferred or paid over to my said wife absolutely; and that one portion thereof less the sum of \$8,000 represented by a policy or policies of insurance on my life payable to my said sisters if such insurance moneys are paid to them or less such portions of such insurance moneys as shall be paid to them be transferred and paid over to them (my said sisters) absolutely in equal shares; and that the remaining one-third portion be transferred or paid over to my son Charles Lenz when he attains the age of twenty-four years."

By clause 9, the executors and trustees were authorised to allow "my said son's portion of my estate" to remain invested as at the date of the testator's death; and, by clause 10, the