

RIDDELL, J.

MARCH 17TH, 1920.

## RE STOREY.

*Will—Construction—Apparently Inconsistent Clauses—Reconciliation—Later Clause Explanatory of Earlier.*

Motion by the executors of the will of James A. Storey, deceased, for an order determining a question as to the meaning and effect of the will.

The motion was heard in the Weekly Court, Toronto.

J. A. Macintosh, for the executors.

J. F. Strickland, for the adult beneficiaries.

E. C. Cattnach, for the Official Guardian.

RIDDELL, J., in a written judgment, said that the testator and his son Merton were tenants in common of certain lots in Peterborough known as Nos. 132, 134, 136, 140, and 140½, Park street. By his will the testator made the following disposition of his real estate: (1) He gave to his son Merton "all my interest" in the two houses Nos. 132 and 134, together with lots 139 and 140, plan 34, in Portage la Prairie, "and all tools and autor-car." (2) He gave to his daughter Margaret his dwelling in Aylmer street, Peterborough, No. 564, and all his household furniture, including his watch, and four houses in Park street, Peterborough, Nos. 140½, 140, 138, 136, and all notes and money if any. (3) He gave and devised to his executors his dwelling in Aylmer street, No. 564, and the four houses in Park street, Nos. 140½, 140, 138, and 136, to sell or to rent as they think best, and the interest or rent to be paid over to Margaret for her support, and the principal received for the property aforesaid to be paid to Margaret at the age of 23 years, and if the property is not sold before Margaret reaches the age of 23, she is to become the owner.

The son and another were appointed executors, and had been granted letters probate of the will. They found difficulty in reconciling clauses 2 and 3.

The learned Judge said that (in general) when two clauses in a will are irreconcilable, the later one is to be preferred. But, before rejecting either, the Court must see that they are really irreconcilable in substance and not in mere form; and, if possible, the Court will reconcile two dispositions apparently inconsistent: *Kerr v. Clinton* (1869), L.R. 8 Eq. 462, 464; *In re Bywater* (1881), 18 Ch. D. 17.

There was no real inconsistency between the clauses. Clause 3 was merely explanatory and not a revocation of clause 2. In