

MIDDLETON, J.

APRIL 13TH, 1916.

*KENNEDY v. SUYDAM.

Will — Construction — Residuary Clause — Maintenance of "Residence"—Rule against Perpetuities—Executor—Power of Sale—Annuity Charged on Estate — Trustee Act, R.S.O. 1897 ch. 129, sec. 16—1 Geo. V. ch. 26, sec. 46—Devolution of Estates Act—Contract of Sale—Interpretation Act, sec. 14—Intestacy—Res Judicata—Land Titles Act—Registration under—Title to Land.

Action by Robert Kennedy to set aside a sale of land made by James H. Kennedy, executor of the will of David Kennedy, to the defendants Suydam and the Suydam Realty Company, who in turn sold to the defendants the Toronto Development Company.

David Kennedy died on the 17th February, 1906. After his death, several actions were brought with regard to his estate and the interpretation of his will. See, for instance, Kennedy v. Kennedy (1912-13), 26 O.L.R. 105, 28 O.L.R. 1; Kennedy v. Kennedy (1911), 24 O.L.R. 183; Foxwell v. Kennedy (1911), 24 O.L.R. 189.

By the will the testator gave to James H. Kennedy his dwelling-house; he directed that out of his estate there should be paid to his son David \$400 per annum during the term of his natural life, adding, "I hereby charge my estate with this annuity in favour of my son David." The residuary clause will be found in the reports mentioned. The residue was to be employed by the executors (of whom only James H. Kennedy acted) to the maintenance and keeping up of the house devised to James, with power to the executors to "make sales of any real estate" and to use the proceeds for such maintenance; and, if it should be necessary to sell the house, that the residuary estate then remaining should be divided in equal proportions among the several pecuniary legatees.

The present action was tried without a jury at Toronto.

W. N. Tilley, K.C., and J. H. Fraser, for the plaintiff.

I. F. Hellmuth, K.C., for the defendants Henry Suydam and the Suydam Realty Company.

E. D. Armour, K.C., and W. H. Clipsham, for the defendants the Toronto Development Company.

MIDDLETON, J., after setting out the facts and referring to the previous litigation, in a written opinion of some length,