

in accordance with the policies; (5) directed that the residue of his estate should be divided into two equal shares, one of which he gave to his wife absolutely, and the other share he gave to his executors and trustees upon trust to convert it into money and invest it and to pay the income arising therefrom to his wife during her life, and upon her death to divide the corpus among his four children, Debir Major Spink, Blanche Gertrude Brodie, Pearl May Watson, and Ruby Irene Middleton, in equal shares, with a provision that if any of his children should die before receiving his or her share leaving no child or children him or her surviving such share should become the property of his "living children or their issue, the child or children of a parent so dying to inherit their deceased parent's share or portion."

The wife, one Chipman, the daughter Ruby, and the son Debir were appointed executors and trustees.

The codicil was executed on the 3rd February, 1914. It recited that the testator's son Debir had died on the 29th December, 1913, and named new executors, three being the same as in the will, and the fourth being the testator's son-in-law, John K. Brodie. It continued: "My wife shall have all and everything that might have come to her or me under the will . . . of her son Debir . . . and . . . my wife . . . shall have . . . one fourth of my life insurance . . . one quarter of these policies go direct to my wife but all my other property now goes with my last son dead to my three daughters under the terms of my said last will. In all other respects I confirm my said will."

The question for decision was, whether or not the effect of the codicil was to revoke the provisions of the will and to substitute for them the provisions of the codicil, and that question had been answered in the affirmative by Masten J. The respondents contended that the bequest to the wife of one half of the residue was revoked by the codicil.

The son Debir died without issue and unmarried; his estate amounted to about \$11,000; by his will it was given in equal shares to his father and mother; the insurance-money arising from policies on the testator's life amounted to about \$20,000; the share of it which the wife would have taken under the will amounted to \$9,000—under the codicil it was only \$4,000; and the residuary estate amounted to about \$30,000, including the testator's share of Debir's estate.

The learned Chief Justice, after a full discussion of all the circumstances and reference to numerous authorities, said that the order of Masten, J., should be reversed, and that there should be substituted for the declaration made by him a declaration that,