

issue. In whatever way the codicil is read the inference from the language used is that the testator had not clearly thought out what it was that he meant to dispose of by it.

Under these circumstances their Lordships take the same view of the question of construction as was taken by the Court of Appeal for Ontario, that dispositions carefully made by the will cannot be treated as revoked by language used subsequently which is ambiguous and indefinite in its directions.

Their Lordships will humbly advise His Majesty that the appeal should be dismissed with costs, those of the trustee respondents being paid out of the estate.

SUPREME COURT OF ONTARIO.

SECOND APPELLATE DIVISION.

FEBRUARY 18TH, 1914.

DAVID DICK & SONS v. STANDARD UNDERGROUND
CABLE CO.

5 O. W. N. 889.

Contract—Default in Delivery of Goods Purchased—Cause of—Evidence—Dismissal of Action—Contingent Assessment of Damages.

MIDDLETON, J., 25 O. W. R. 53; 5 O. W. N. 82, *held*, in an action for damages for non-delivery of goods as ordered that the default was due solely to the actions of the plaintiffs and dismissed the action with costs, but fixed the damages in the event of a successful appeal at \$1,000.

SUP. CT. ONT. (2nd App. Div.) varied above judgment by reducing amount allowed on counterclaim by \$1,693, otherwise appeal dismissed with costs.

Appeal by the plaintiff from a judgment of HON. MR. JUSTICE MIDDLETON, 25 O. W. R. 53.

The appeal to the Supreme Court of Ontario (Second Appellate Division) was heard by HON. SIR WM. MULLOCK, C.J.Ex., HON. MR. JUSTICE RIDDELL, HON. MR. JUSTICE SUTHERLAND and HON. MR. JUSTICE LEITCH.

J. L. Counsell, for the appellant.

D. L. McCarthy, K.C., for the defendants, the respondents.

H. A. Burbidge, for the third parties.