

## IN RE RISPIN. CANADA TRUST CO. v. DAVIS.

1912

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

\*May 22.  
\*June 14.*Will—Trust for benefit of son—Discretion of executor—Death of beneficiary—Funds not disposed of.*

APPEAL from a decision of the Court of Appeal for Ontario(1), affirming the judgment of the Chancellor on questions arising as to disposition of an estate under a will.

The will in question devised the testator's real estate and chattels to his son and the rest of his property to his executor in trust with directions as follows: "And I authorize and request him to pay the interest \* \* \* and the principal in whole or in part to my son \* \* \* as in the judgment of my executor as may be prudent with reference to the habits and conduct of my son, my will and intention being that it shall be wholly in the discretion of my said executor to pay the interest and principal in such amounts and at such times as he may think right or to withhold the payment altogether." The son received various amounts from the executor while he lived and, after his death, a considerable sum remaining, the question arose as to its disposition, namely, whether it should go to the heirs of the son or to the next of kin of the testator.

The courts below held that there was an intestacy as to this sum and that the next of kin of the testator,

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\*PRESENT:—Sir Charles Fitzpatrick C.J. and Idington, Duff, Anglin and Brodeur JJ.

(1) 25 Ont. L.R. 633.

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to be ascertained as at the date of his death, were entitled to it.

The executors of the son appealed to the Supreme Court of Canada which, after hearing counsel for the respective parties, reserved its judgment and, on a subsequent day, dismissed the appeal with costs, the testator's executor and official guardian to have out of the estate their solicitor and client costs incurred over and above the party and party costs to be paid by the appellant.

*Appeal dismissed with costs.*

*F. G. Meredith K.C.* and *John Macpherson* for the appellants.

*Betts K.C.* for the respondent.

*W. R. Meredith* for the Official Guardian.

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