

Privy Council Appeal No. 99 of 1913.

Edward D. Farrell - - - - *Appellant,*

v.

**The National Trust Company, Limited, and
others** - - - - *Respondents.*

FROM

THE COURT OF APPEAL FOR ONTARIO.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 7TH APRIL 1914.

Present at the Hearing.

THE LORD CHANCELLOR.

LORD MOULTON.

LORD DUNEDIN.

LORD PARKER OF WADDINGTON.

LORD SHAW.

[*Delivered by* THE LORD CHANCELLOR.]

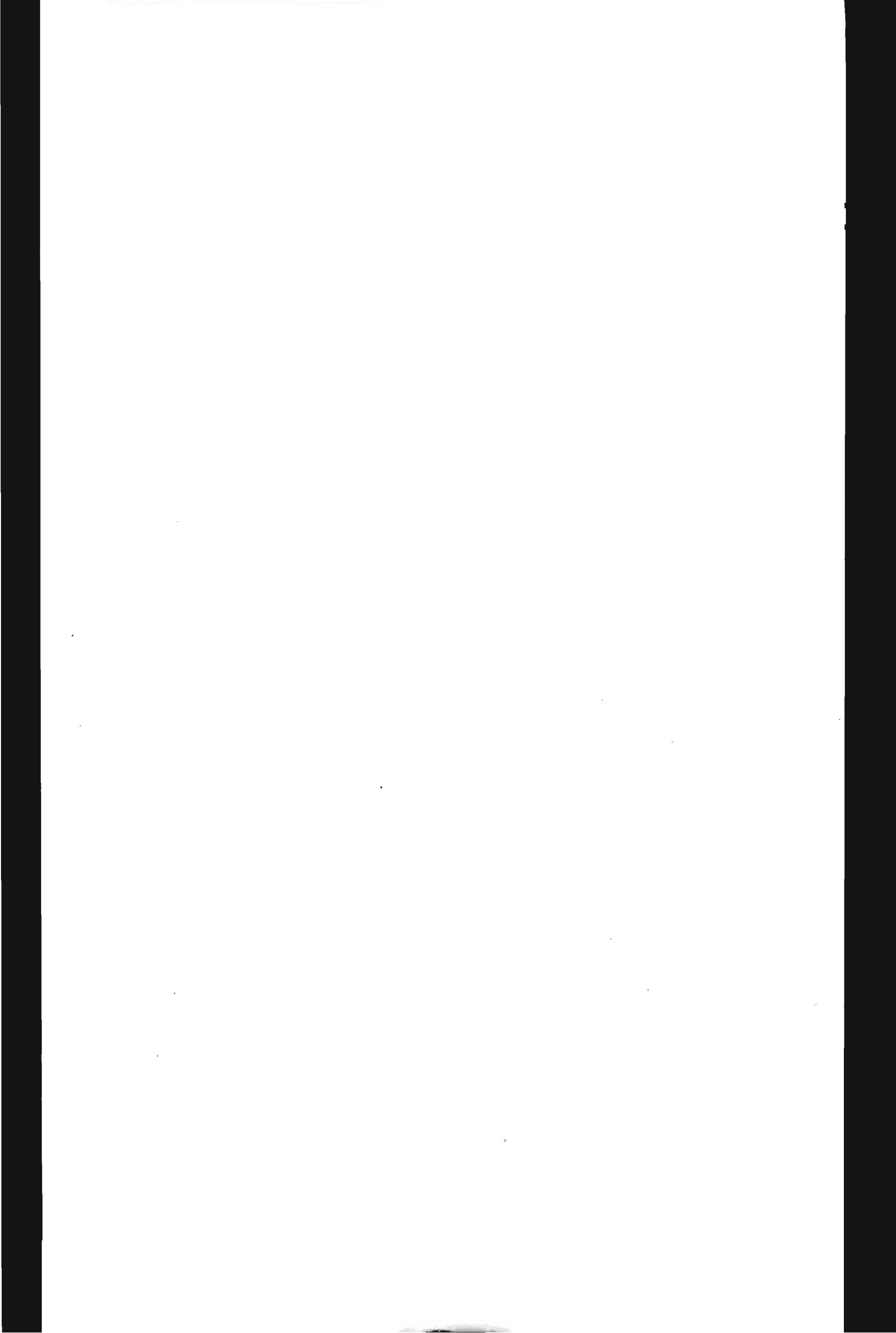
Their Lordships have considered the will and the various codicils made by the testator. The conclusion at which they have arrived is that it is impossible to attach to the codicil of the 20th March 1909 either of the meanings which are contended for by the appellant. If it is suggested that this codicil was intended to dispose of the whole of the residue which had already been exhaustively dealt with in the will itself, the answer is that the codicil provides that on failure of the issue of Dr. Edward Farrell, what is given by it is to go into the testator's residuary estate. This shows that he contemplated that the disposition of his residue by the will was intended by him to remain unrevoked. If it is,

[27] J. 320. 90.—4/1914. E. & S.

on the other hand, suggested that the testator intended to give Dr. Edward Farrell something by the codicil, and that effect must be given to the intention, the answer is that this something has not been sufficiently indicated by the testator to enable it to be ascertained by a Court of Justice. He purports to dispose of:—"What-ever balance may remain to the credit of my estate whenever the final settlement of the same is made by my trustees, the National Trust Company of Ontario, at Toronto." There is no time defined at which this final settlement is to be made, and it can hardly be conceived that the testator meant to leave the amount given to depend on the discretion of the trustees. Nor, if this difficulty were got over, is it easy to think that he meant that the whole of the income of his residue, reaching a much larger amount than he was giving to other legatees in a similar position to Dr. Farrell, was to go, as has been suggested, to the original residuary legatees until the death of Dr. Farrell's mother, and was then to pass to Dr. Farrell in such a way as to give him the *corpus*, which in its turn was to come back to the original residuary legatees in the event of his death without 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.



In the Privy Council.

EDWARD D. FARRELL

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THE NATIONAL TRUST COMPANY,
LIMITED, AND OTHERS.

DELIVERED BY
THE LORD CHANCELLOR.

LONDON

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