

discord, for he decided contrary to the contention of any of the parties, that the effect of the will was to vest an absolute estate in Harriet, and, therefore, he held her devisee took the whole estate. On the appeal, however, the court disagreed with his view, and held that Harriet only took a life estate, and that on her death the residuary devise took effect. In arriving at this conclusion, the court approved of, and adopted, the rule laid down by the Irish Master of the Rolls in *Kinsella v. Caffrey*, 11 Ir. Ch. 154. It may also be useful to notice that although only one of the residuary devisees appealed, yet the court nevertheless made a declaration generally, that in the events which had happened the property in question had fallen into the residue.

VENDOR AND PURCHASER—SUBSTITUTION BY VENDORS OF NEW TITLE—RESCISSION BY PURCHASER.

*In re Head & Macdonald*, 45 Chy.D., 310, may be read in conjunction with the recent case in our own court of *Paisley v. Wills*, 19 Ont., 303. The case was an application under the Vendor and Purchaser Act, 1874. The vendors were trustees under a will which contained a power to sell after the death of the testator's widow, and they entered into a contract for the sale of the trust property on 17th December, 1889; 24th January, 1890, being fixed for the completion of the contract. On the 22nd December, 1889, the abstract was delivered. The purchaser then inquired if the testator's widow was living, and was informed that she was and would join in the conveyance; to which the purchaser's solicitor rejoined that as she was living the power to sell had not arisen. On the 6th January, 1890, the vendor's solicitor wrote, contending that the power could be accelerated by the widow surrendering her life estate. On the 7th January the purchaser's solicitor repudiated the contract and claimed a return of the deposit. This the Court of Appeal (Cotton, Fry, and Lopes, L.JJ.), affirming the opinion of Chitty, J., decided the purchaser was entitled to, and in doing so they determined that a mere authority to trustees to pay debts did not create an implied power to sell the trust property in order to pay them, and in this respect a mere authority to pay differs from a positive direction. In *Paisley v. Wills* the title was in the vendor's wife, and not in the vendor himself, but she offered to convey to the purchaser; the latter resisted the performance on the ground of fraud, and it was not until the trial that by amendment then made he claimed rescission on account of the infirmity of the title, although he knew of the defect sometime previously; and the court was of opinion that the neglect promptly to repudiate the contract on that ground deprived him of the right to insist on the objection. It may be noted that *Re Bryant & Birmingham*, 44 Chy.D., 218, does not appear to have been before the court in that case.

COSTS—SET OFF—ORD. LXV., R. 27 (21) (ONT. RULE 1204).

*In re Crawshaw, Dennis v. Crawshaw*, 45 Chy.D., 318, on the dismissal of an appeal, the respondent asked that the costs might be directed to be set off against costs which had been previously ordered to be paid to the appellants out of the estate. But the court declined to make any order, but stayed the payment out