

over the residue to Mary.* That is contrary to the terms of the will: the executors, as such, are to be discharged when the testator's wife is dead, and the residue is then to be transferred by the executors to Mary as trustee for the purposes and on the trusts hereinbefore specified and in the will defined.

The costs of appeal may come out of the estate.

CLUTE, J.

JANUARY 19TH, 1911.

CANADIAN PACIFIC R.W. CO. v. ROSIN.

Vendor and Purchaser—Contract for Sale of Land—Option—Authority of Agent of Vendor—Ratification—Time—Acceptance by Assignee of Person Named in Option—"Assigns" not Mentioned—Undisclosed Principal.

Action for specific performance or for damages for the refusal of the defendant to convey land pursuant to an option signed by one Brisson, assuming to act as agent for the defendant, and afterwards accepted, not by John C. Murray, to whom it was given, but by the plaintiffs' solicitors. Murray assigned the option to the plaintiffs on the same day that it was given. No consideration was mentioned in the assignment.

W. L. Scott, for the plaintiffs.

A. T. Thompson, for the defendant.

CLUTE, J.:—The defendant had purchased the lands in question on the 28th May, 1910, for \$1,500. The transaction was mainly conducted by the defendant's wife, who seems to have had knowledge of what was being done, and authority to act on behalf of her husband. At the time the land was purchased, she, acting on behalf of her husband, gave a limited authority to the agent to sell, the instructions being that he should sell the property within a couple of weeks. The property was not sold within a couple of weeks; but afterwards the option in question was given; and, before the option had been accepted, Mr. Brisson met the defendant and his wife and informed them that he had sold the property, and that they would get their money within ten days. He did not have the option with him at the time. He

*The words used by FALCONBRIDGE, C.J.K.B., in his reasons for judgment, ante 331—"The executor may not, therefore, pay or hand over to Mary all the rest and residue of the estate"—were meant to express the opinion that the executor could not pay over to her to hold in her own right absolutely, which was the only matter argued before the Chief Justice. If counsel had spoken to the minutes before the Chief Justice, the appeal would probably have been unnecessary.