

being in the hands of the executors and trustees proper trust securities amply sufficient to secure all the annuities and to leave a surplus presently available for distribution among the persons entitled to the residue, there was no necessity to convert these securities into money; and it would suffice to set apart securities for such an amount as, calculating the interest to be derived from it at the rate of four per cent. per annum, would produce a yearly sum equal to the amount of the annuities to be provided for. *In re Parry*, 42 Ch. D. 570, and *Harbin v. Masterman* (1896), 1 Ch. 351, followed. *Ross v. Hicks* (1891), 3 Ch. 499, referred to.

*Held*, also, that these matters could properly be determined and an inquiry directed upon an originating notice under Rule 938 brought on by one of the persons entitled to the residue. *In re Medland, Eland v. Medland*, 41 Ch. D., at p. 492, and *In re Parry*, *supra*, followed.

The order also directed that, in the event of the parties agreeing or the Master directing that any sum be expended on the purchase of Government annuities, the annuitant might elicit to receive such sum in discharge of his annuity, and that the same should, on the execution of a proper discharge, be paid to the annuitant.

*Held*, that it is only when the persons whose estate is liable to pay an annuity and the annuitant both consent, that an annuity may be redeemed out of the estate; and the order should be varied so as to require that consent.

*G. F. Shepley, K.C., A. B. Aylesworth, K.C., M. D. Fraser, J. Folinsbee and D. Urquhart*, for various parties.

Meredith, C.J., Lount, J.]

[Jan. 22.

BIRKETT v. BREWDER.

*Mechanics' liens—Material men—Agreement between owner and contractor—Draw-back—Value of plant—Completion of work—Judgment—Estoppel.*

The plaintiffs furnished materials to the contractors for certain works, and the action was brought against the contractors and the owner to realize a lien under the Mechanics' and Wage-Earners' Lien Act. The agreement between the contractors and the owner for the execution of the works provided (cl. 10) that all machinery and other plant, materials, and things provided by the contractors and not rejected should, from the time of their being provided, become and be, until the final completion of the works, the property of the owner for the purpose of the works, and should not be taken away or used or disposed of except for the purpose of the works, but at the completion of the works all such plant and machinery as should not have been used should be delivered to the contractors; also (cl. 12) that on the happening of certain events the owner might take the works out of the contractors' hands and complete them, and in that case the contractors should have no claim for any further payments in respect of the work