

the contract been carried out, such further sum as they would have been obliged to expend in its completion.

The plaintiffs' damages, therefore, should be fixed at \$675, to include interest down to the commencement of the action. If the plaintiffs or defendants are dissatisfied with this amount, they may have a reference to the Master at their risk.

Subject to a possible reference, judgment for the plaintiffs for \$675, with interest from the date of the writ of summons and costs on the Supreme Court scale.

Reference to *Mayne on Damages*, 8th ed. (1909), p. 126; *Tredegar Iron and Coal Co. v. Hawthorn Brothers and Co.* (1902), 18 Times L.R. 716, 717; *Frost v. Knight* (1872), L.R. 7 Ex. 111; *Planché v. Colburn* (1831), 8 Bing. 14; *Braithwaite v. Foreign Hardwood Co.*, [1905] 2 K.B. 543.

MIDDLETON, J.

FEBRUARY 14TH, 1917.

RE KOHLER.

Will—Construction—Moneys Received from Investment Made by Testator—Income or Capital—Executory Gift—Substitutional Gift—Period of Distribution.

Motion for an order determining a question as to the construction of the will of Christian Kohler, deceased.

The motion was heard in the Weekly Court at Toronto.

A. J. Thomson, for the children of the testator.

F. W. Harcourt, K.C., for the issue of children born and yet to be born.

MIDDLETON, J., in a written judgment, said that the testator, who died on the 10th March, 1915, by his last will, dated the 13th March, 1911, duly admitted to probate, dealt with his residuary estate by clause 10. His trustees were to convert the same into money as soon as conveniently might be, and to invest, and, after certain provisions, not now material, to pay to his widow an annuity out of the income, and, if need be, the corpus; and, upon the death or remarriage of the widow, to divide the residuary estate equally among the children. Then followed a provision that if any child died before the period of division, leaving issue,