

ly payable under the contracts since the defendant ceased to pay, with suitable interest.

The defendant should have judgment for \$2,000 with costs of the action, as he was entitled to refuse to pay until the question of damages for abatement was adjusted or determined.

In the event of a reference, it will be to the Local Master at Sandwich, and further directions and subsequent costs will be reserved until after report.

In taking the account of the amount due to the plaintiffs, all interest paid in respect of so much of the purchase-price as equals the sums allowed by way of compensation are to be treated as payments on account of principal.

ROSE, J.

JANUARY 7TH, 1920.

SHEPPARD v. BERRY.

Trusts and Trustees—Settlement—Money Deposited in Bank in Names of Agents of Settlor—Direction as to Disposition by Agents—Attempt at Making Testamentary Disposition—Executed Trust—Validity—Duty of Trustees to Dispose of Residue of Fund after Death of Settlor—Action by Person Claiming Estate of Settlor under Will—Dismissal—Costs.

The plaintiff, as administratrix (with the will annexed) of the estate of Catherine Wilson, deceased, sued for an account of the defendant's dealings with a sum of \$929.58, drawn out of Catherine Wilson's bank, on her own cheque, and deposited to the credit of the defendant and Margaret Wilson, about a month before the death of Catherine Wilson.

The action was tried without a jury at Brockville.

H. A. Stewart, K.C., for the plaintiff.

A. E. Fripp, K.C., for the defendant.

ROSE, J., in a written judgment, said that Alexander Wilson, husband of Catherine Wilson, died in 1902, leaving a will, which was never admitted to probate, by which he left the residue of his estate to Catherine Wilson, to have, use, enjoy, and control during her widowhood, directing that whatever part of his personal estate should remain at the death or re-marriage of Catherine Wilson should go to his three daughters by a former wife.

It seemed to be reasonably clear that what money Catherine Wilson had at her credit in the bank at the time of the transaction in question, on the 3rd April, 1918, had been derived wholly or in