

assets are in the hands of the executors, or to have sums applied in the purchase of Government annuities in the same way, from time to time, as shall seem most expedient to the Master if the parties differ.

G. F. Shepley, K.C., for the executors, contended that they had a right to complain that the estate was taken out of their hands, and that the Court should not interfere with the administration by them and practically set aside the will, no impropriety being alleged against them.

A. B. Aylesworth, K.C., for David McIntyre.

M. D. Fraser, London, for Hugh McIntyre.

J. Folinsbee, Strathroy, and D. Urquhart, for other adult parties.

F. W. Harcourt, for infants.

Judgment of the Court (MEREDITH, C.J., LOUNT, J.) was delivered by

MEREDITH, C.J.— . . . It is clear that it is only when both the persons whose estate is liable to pay an annuity, and the annuitant consent, that an annuity may be redeemed out of the estate . . . That was the intention of the Chancellor, he tells me, and if the order provides otherwise, it is wrong, and should be varied. . . . In other respects the order is substantially right. After realizing what may be necessary to pay debts, etc., the annuitants are entitled to have only such portion of the estate set apart as may be necessary to secure their annuities: *Re Parry*, 42 Ch. D. 570: and the extent of such security is to be determined on the principles laid down in *Harbin v. Masterman*, [1896] 1 Ch. 351; see, also, *Ross v. Hicks*, [1891] 3 Ch. 499. The trustees have on hand securities, proper to be held by them as trustees, amply sufficient to secure all annuities, and leave a surplus presently available for distribution among the persons entitled to the residue, and there is no necessity to convert these securities into money. It will suffice to set apart such of these securities, as at 4 per cent. per annum will produce yearly a sum equal to the particular annuity for which the security is set apart. The questions are proper to be decided on a motion under Rule 938: *Re Medland*, *Eland v. Medland*, 41 Ch. D. at p. 492, decided on the corresponding English Rule. The question in *Re Parry*, *supra*, somewhat similar to this, was raised upon an originating summons. Having outlined the principles upon which the appellants should act, there is no necessity for a reference, and if one is had, its costs must be reserved to be disposed of, after report, by a Judge in Chambers. Order is varied as to costs, and as to redemption of legacies; otherwise