

that interest is not payable on a legacy, whether vested or not, until it is actually due and payable. Interest is given for delay in payment. The testator here has in effect declared that these legacies are not to be paid until the death of the widow. If that falls after the beneficiaries attain 21, it does not follow that interest should be given in the interval; for the time has not arrived which the testator has fixed for payment, and there is no default. Interest is not to be exacted when by the direction of the testator there is nothing in hand to pay the legacy. *Toomey v. Tracey*, 4 O. R. 708, distinguished. Therefore, the appeal should be allowed and it should be declared that interest on the legacies runs only from the death of the widow. See *Crickett v. Dolby*, 3 Ves. 16. Order accordingly. Costs out of the estate.

STREET, J., concurred.

MEREDITH, J.:—The meaning of the will is, that, in the events which have happened, the legacies in question became payable at the widow's death, not upon the legatees respectively attaining full age.

The scheme of the testator, as developed in his will, was that the estate should remain intact until his wife's death, so that she might have the benefit of the whole income from it; and that at her death the legacies in question should go to these grandchildren, to be paid to them as they attained majority, and all were put upon an equality by the express provision that interest should be paid to those whose payments should be deferred by reason of their minority.

The fact that one of the legatees attained full age in the testator's lifetime goes to confirm this reading of the will.

WINCHESTER, MASTER.

OCTOBER 17TH, 1902.

CHAMBERS.

HARRIS v. HARRIS.

*Pleading—Statement of Claim—Statements of Unnecessary Facts and of Evidence—Embarrassment—Pleading to Claim—Waiver.*

Motion by defendant Elizabeth Harris to strike out certain paragraphs of the statement of claim. The plaintiff, claiming to be the lawful widow of the late Hebron Harris, brought this action against Elizabeth Harris, who also claimed to be the widow of Hebron Harris, and the executors of his will, for a declaration that plaintiff was the lawful wife and is the lawful widow of the deceased. The paragraphs of the statement of claim objected to referred to a certain action in the High Court, in which the defendants the executors were plaintiffs and the two sons of the plaintiff were defendants, brought to