

for that year, but the by-law was silent as to the commission on the proceeds of any tax sale held in that year. The council did not bring the resolution to the plaintiff's attention nor in any way intimate to him that his acceptance of the office at a salary of \$80 a month involved the forgoing of his statutory right to commission on any tax sales during 1917; and the passage of a mere resolution by the council of 1916 could not be construed as an arrangement between the plaintiff and the corporation. An "arrangement" must receive the concurrence of both parties. If the plaintiff was to be bound by the resolution, it was the duty of the council to call his attention to it and to give him to understand that his acceptance of the trusteeship for 1917 was conditional on his forgoing the commission in that year.

There was no evidence of any arrangement, and the District Court Judge had found that there was none.

The appeal should be dismissed with costs.

RIDDELL and SUTHERLAND, JJ., concurred.

MASTEN, J., also concurred, for reasons briefly stated in writing.

*Appeal dismissed.*

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#### HIGH COURT DIVISION.

KELLY, J.

JANUARY 10TH, 1921.

#### RE KERLEY.

*Will—Construction—Legacy not Paid in Full—Death of Legatee—Payment to Personal Representative or into Court—Bequest to Nephew Predeceasing Testator—Lapse—Wills Act, sec. 37 (9 Geo. V. ch. 25, sec. 15)—Residuary Estate—Division of "Equally" among Legatees—Division not to be Made pro Rata according to Amounts of Bequests—Succession Duty.*

Application by the executor of William Kerley for an order determining four questions arising in the administration of the testator's estate according to the provisions of the will.

The motion was heard in the Weekly Court, London.

E. C. Sanders, for the executor.

J. S. Robertson, for Rose Trimby.

F. P. Betts, K.C., for the Official Guardian, representing the infant children of William Hounsell.