

H. W. M. Murray, K.C., for the Protestant Orphans' Home.

J. T. Small, for the Church Home for the Aged.

MEREDITH, C.J.—It is impossible to say that any one of the claimants is the object of the bounty of the testatrix, but, according to the principles upon which the Court acts in such cases, the legacy does not therefore lapse, and the fund must be applied *cy près*. An equal division among the claimants of the fund, or what little will remain of it after paying the costs, would seem to me a proper application of it. Order accordingly. Costs of all parties out of the fund, and the division will be of what remains.

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MEREDITH, C.J.

JULY 16TH, 1904.

TRIAL.

BROWN v. DULMAGE.

*Sale of Goods — Contract — Terms — Rescission — Resale of Goods by Vendor — Repudiation — Evidence — Amendment.*

Action to recover \$1,000 and interest. Plaintiff alleged that he entered into an agreement with defendant to purchase from him a stock of dry goods, clothing, and other merchandise, and shop fixtures, contained in a shop at Wingham; that it was one of the terms of the agreement that if, upon stock being taken, its value exceeded \$7,000, the agreement was not to be binding; that he paid to the defendant \$1,000 on account of the purchase money; that upon stock being taken the value was found to exceed \$7,000; that he thereupon rescinded the contract, and gave notice to defendant that he had done so, and demanded the return of the \$1,000 which he had paid; but defendant refused to repay it.

The agreement was in writing, dated 28th May, 1903. Its material terms were as follows:—"Stock, fixtures, etc., in the Kent block to be sold at 40 cents on the dollar invoice price—any dispute to be referred back to the stock sheet. Deposit to be \$100. If stock exceeds \$7,000 balance to rated (sic) at 30 cents on the dollar. \$2,000 cash deposit on completion of stock taking. Balance in two and four months equal notes. It stock exceeds \$7,000, deal may be declared off."