

4. Having regard to the special provision which the testator made for his daughter Mildred, a full answer to the fourth question had better be deferred until after the widow has made her election, and after the executors have sold, if they intend to sell, the real estate.

If the daughter Mildred is maintained by the widow, the widow will be entitled to interest upon the \$3,000 for such maintenance; but to get that, the widow's lien for the annuity should not be enforced in such a way as to interfere with its investment.

No doubt the parties—as to income—can agree, when it is known what that will be. If not, the executors can again apply for a further direction and answer to the question.

Costs of all parties out of the estate. Official guardian's costs fixed at \$25.

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HON. SIR G. FALCONBRIDGE, C.J.K.B., IN CHRS.

NOVEMBER 11TH, 1913.

MR. HOLMESTED, SENIOR REGISTRAR. OCTOBER 30TH, 1913.

STEWART v. BATTERY LIGHT CO.

5 O. W. N. 195.

*Evidence—Foreign Commission — Action to Set Aside Contract as Induced by Fraud—Discretion as to Granting a Commission—Convenience.*

HOLMESTED, K.C., *held*, that in some few cases there was a discretion in the Court to refuse a foreign commission and that upon the circumstances of this case an application should be refused, upon the score of convenience.

FALCONBRIDGE, C.J.K.B., dismissed appeal, costs to defendants in any event of the cause.

Appeal by the plaintiffs from the following order of Mr. HOLMESTED, Senior Registrar, sitting for the Master-in-Chambers.

The action was to set aside certain subscriptions for stock in the defendant company and to recover payments made in respect thereof, on the ground that such subscriptions and payments were procured by the fraud and misrepresentations of the defendants Wilson and Schabel.