

not without rights against the fund under certain circumstances.

The testator received all insurances upon his life during his lifetime; there was, therefore, nothing for the bequest to his wife of insurance moneys to take effect upon. The event, however, which happened has been provided for by a later part of the will.

The testator had only three children born at the date of the will; one more was born in his lifetime after the date of the will. Under the terms of the will, the three only take the residuary estate, and the fourth takes no share in either principal or income: *Re Emery's Estate*, 3 Ch. D. 300; *Re Stephenson*, [1897] 1 Ch. 75, 81.

Order accordingly. Costs of all parties out of the estate.

APRIL 11TH, 1903.

DIVISIONAL COURT.

MCARTHUR v. CLARK.

Trover—Conversion and Sale of Goods—Recovery of Judgment against Vendor — Failure to Realize on Execution — Subsequent Action against Vendee—Levy of Small Part—Application as Part Payment.

Appeal by defendant from judgment of Judge of County Court of Bruce in favour of plaintiff in an action in that Court. In January, 1896, plaintiff made a bill of sale to her daughter Charlotte McPhail of certain cattle, and on 2nd September, 1901, the daughter sold the cattle to defendant, who paid her for them. After this sale, and with knowledge thereof, plaintiff recovered judgment against her daughter and the daughter's husband for the value of the cattle in an action of trover. Execution was issued upon this judgment, and was returned nulla bona, except as to \$33, a small portion of it. Plaintiff then demanded the cattle from defendant, who refused to give them up. Plaintiff then brought this action for damages against the defendant as purchaser.

J. Idington, K.C., for defendant.

C. H. Ritchie, K.C., for plaintiff.

The judgment of the Court (FALCONBRIDGE, C.J., STREET, J., BRITTON, J.) was delivered by

STREET, J.—A recovery in trover without satisfaction does not vest the property in defendant. It merely ascertains the price upon payment of which to plaintiff the property will be held to have vested in defendant from the time of the conversion. The levy of \$33 of the damages was merely a part