

life estate to Mary Catherine Laur with remainder to Thomas G. Laur in fee. This decision obviated the necessity of deciding whether the legatees of Mary C. Laur could marshal the assets against Thomas.

The remaining question is as to whether the legacy or annuity to Martha Elizabeth Smith (cl. 4 of the will of Mary C. Laur) abates with the other legacies, and if so how such abatement should be worked out.

It seems clear to me that this provision is not an annuity, but an ordinary pecuniary legacy, with a direction as to the mode of payment. Even if it were an annuity, it would abate equally with general legacies: *Miller v. Huddlestone*, 3 Macn. & G. 513.

It, therefore, abates with the other legacies, and the deficiency is not wholly applicable to the later payments, but the yearly payments must be ratably and proportionately reduced.

Costs to all parties out of estate.

I have referred to the following cases: *In re Hiscoe*, 71 L. J. Ch. 347; *King v. Yorston*, 27 O. R. 1; *Wright v. Callender*, 2 De G. M. & G. 652; *Michell v. Wilton*, L. R. 20 Eq. 269; *Koch v. Heisey*, 26 O. R. 87; *Carmichael v. Gee*, 5 App. Cas. 588; *Miller v. Huddlestone*, 3 Macn. & G. 513; *Todd v. Bielty*, 27 Beav. 353.

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MARCH 16TH, 1905.

#### DIVISIONAL COURT.

#### HEATON v. SAUVÉ.

*Sale of Goods—Contract—Fulfilment—Non-payment of Price—Exercise of Vendor's Lien—Changing Character of Goods.*

Appeal by plaintiff from judgment of IDINGTON, J., dismissing action to recover \$500 paid by plaintiff to defendant on account of barked pulpwood got out by defendant for plaintiff pursuant to a contract. The balance of the price not being paid, defendant sold the wood which remained.

W. H. Barry, Ottawa, for plaintiff.

W. R. Smyth, for defendant.

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

ANGLIN, J.— . . . A careful perusal of the evidence satisfies me, not only that there is abundant testimony to warrant the findings of the Judge, but that no other conclusions