

RIDDELL, J.

OCTOBER 21ST, 1907.

TRIAL COURT.

PATCHING v. RUTHVEN.

Will—Charge on Land—Declaratory Judgment — Reformation of Deed—Removal of Executor—Administration—Receiver.

Action for reformation of a deed and to establish a charge and for other relief.

O. E. Fleming, Windsor, for plaintiff.

J. H. Rodd, Windsor, for defendant.

RIDDELL, J.:—Plaintiff is the step-father of defendant. By the will of the late mother of defendant, the plaintiff's wife, the defendant took certain personal estate and also certain real estate, including a hotel and 2 lots, on the latter of which was built the house in which the deceased lived at the time of her death, as did plaintiff and defendant, deceased's husband and daughter.

This will gave "to my daughter Elizabeth N. Ruthven all my property, real and personal, including the house and lots . . . provided my husband A. E. Patching is to have a home in the house No. 107 at any and all times he may wish, and I direct my daughter Elizabeth N. Ruthven . . . to pay my said husband the sum of \$30 per month, payable monthly, as long as he lives. The said real estate now stands in the name of my said husband and myself, and the above payment to him of \$30 per month is for his interest therein, which he is to convey to my said daughter."

The will then proceeds to dispose of the other property, including the hotel, and devises this to the daughter, the defendant—and the plaintiff and defendant are appointed executors.

After the death, the plaintiff accepted the terms of the will, and conveyed to defendant his interest in the lots in "consideration of the directions in the will of Anna M. C. Patching and \$1." Subsequently an agreement was entered into whereby the parties agreed to a payment of \$2 per week in lieu of plaintiff's right to reside in the house.