

But the plaintiffs could have avoided incurring the costs of the action brought by Jeffery & Dainard . . .

Judgment will be in favour of the plaintiffs for \$600 and interest thereon from the 10th January, 1912, and also for the \$18 premium received by the defendant and not accounted for, and interest thereon from the 8th November, 1910, and the costs of this action.

KELLY, J.

JANUARY 24TH, 1913.

RE QUAY.

*Will—Construction—Legacy Payable in Instalments—Inconsistent Provisions.*

Application by Ralph Ira Dwight Quay, a son of William Quay, deceased, for an order, under Con. Rule 938, determining certain questions arising upon the construction of the following clause in the will of the deceased: "I hereby direct my executors to give to my son Ralph Ira Dwight Quay, D.D.S., the sum of \$25,000 as follows, namely, \$6,000 within three months after my decease and \$600 every six months thereafter for fifteen years. Should he marry, he shall receive \$5,000 of above \$25,000 and the balance at the end of fifteen years after my decease."

The following questions were submitted:—

1. Whether the clause providing for the payment of \$5,000 to Ralph Ira Dwight Quay in the event of his marriage was effective and capable of being enforced.

2. Whether, after payment of the \$5,000, Ralph Ira Dwight Quay was still entitled to receive from the estate of William Quay the semi-annual payment of \$600.

3. Whether, under the clause in question, Ralph Ira Dwight Quay was entitled to receive in all the sum of \$25,000 or the sum of \$24,400.

H. A. Ward, for the applicant.

J. M. Kilbourn, for the executor and two beneficiaries.

J. D. Montgomery, for Frederick Quay.

KELLY, J.:—I answer the questions as follows:—

1. The legatee is entitled on his marriage to receive \$5,000, if at that time there be unpaid to him (out of the \$25,000) that