

same into money, and out of the proceeds to pay to her daughter "\$400 absolutely" and to a son "\$400 absolutely." "The balance" the will proceeds, "is to be paid to my husband, Anthony Collins, by my executor, at such times and in such amounts as to my said executor may seem necessary for the proper maintenance of my said husband."

Anthony Collins died about two years after the testatrix. He had been paid certain small sums which did not exhaust the residue. The plaintiffs, who are three of the heirs at law of the testatrix, now ask for the construction of the will. The clause referring to the legacy to the husband of the testatrix is the only one open to question.

I think the husband was entitled not to the whole balance or residue of the estate, but only to so much thereof as the executor thought proper to pay him. The general word "balance" is controlled by the explicit direction which follows, limiting the sums to be paid from time to time to so much as to the said executor should seem necessary for the proper maintenance of the legatee. To adopt the words of the learned Chancellor in *Re Rispin*, 19 O. W. R. 269, at p. 270, affirmed C. A., 21 O. W. R. 308, "the whole benefit was contingent on the bona fide judgment and volition of the executor." There will be a declaration that the undisposed of "balance" forms part of the residuary estate of the testatrix. Costs out of the estate—those of executor as between solicitor and client.

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DIVISIONAL COURT.

OCTOBER 31ST, 1912.

THOMPSON v. McPHERSON.

4 O. W. N. 216.

*Mining Contract — Sale of Interest in Mining Company — Abandonment — Rescission — Registration of Caution Against Company's Claim.*

KELLY, J., 21 O. W. R. 646; 3 O. W. N. 791, dismissed with costs plaintiff's action for specific performance of an agreement to sell an interest in the Mac Mining Co., or in the alternative for damages in the sum of \$14,666.66, and interest from the due dates mentioned in the agreement holding that the agreement was indefinite and incomplete, the interest and sale price not being ascertained.

DIVISIONAL COURT affirmed above judgment.