

part of accumulated income, and of the amount by which the buildings obtained by the default in payment of their rent went to make up the purchase price, which was shewn to be \$6,000; *Wilkinson v. Duncan*, 23 Beav. 469; *Beavan v. Beavan*, 24 Ch. D. 649 n.; *Re Chesterfield's Trusts*, *ib.*; *Walker v. Appach*, 55 L. J. Ch. 422; *Matthewson v. Goodwin*, 62 L. T. 216; that it should be ascertained what sum, at the date of the death, or one year after that date, invested at 6 per cent. up to 7th July, 1900, and at 5 per cent. since that time, with half-yearly rests, and giving credit for the income actually received by the life tenants, would have produced the purchase price of \$47,500 in November, 1902; that such sum would be capital, and the difference between that amount and the \$47,500 should be paid them as deferred income.

F. W. Harcourt, for the infant remaindermen.

MACLAREN, J.A.—The argument of the life tenants does not present a correct application of the rule. The deed of partition of 1st July, 1887, and the acceptance by each of the life tenants of an undivided fourth of the real estate as capital, the ratification of the acts of the trustees, and the appointment by them of these trustees to the new separate trusts, preclude them from going back beyond that date. It was in effect an election on their part to treat this as a satisfactory investment, and they cannot say that the property was unproductive. However, the default of the lessee in 1894, the fact of the property remaining largely unproductive until 1902, the impossibility of making an advantageous sale before that time, and the fact that the price then obtained was in a considerable part at the expense of the life tenants, raise different consideration; and the principles laid down in *Re Cameron*, 2 O. L. R. 756, should be applied. (*Boustead v. Cooper*, [1901] 2 Ch. 779, referred to.)

As to the rate of interest, the Interest Act, R. S. C. ch. 127, does not apply. The rate is to be determined by the rate which can be obtained on securities upon which trustees may invest, and 4½ per cent. net would be a fair rate here. *Walters v. Solicitor for the Treasury*, [1900] 2 Ch. 107, 118, referred to.

Order directing a reference to Neil McLean, Official Referee, to determine what sum invested on 1st May, 1894, would have produced \$47,500 on 15th November, 1902, interest being calculated at 4½ per cent. per annum, with half-yearly rests, and credit being given for the sums actually received by the life tenants from the rents accruing during that period. Costs and further directions reserved.