

receiving payment thereof they shall forthwith transfer the said amount to trustees for their benefit reserving only their testamentary power over the principal of the estate."

It appeared to have been the intention of the testator that the fund bequeathed to Emily M. Buchanan should at all times be impressed with the trusts and be subject to the conditions set forth in the will. The rule is, that the intentions of the testator shall be carried into effect unless some positive rule of interpretation stands in the way.

There should be an order declaring that the gift to Emily M. Buchanan is impressed with the trusts set forth in the will; that the executors are not bound to hand over the estate without any precaution as to the settlement directed by the will, but are bound to see that the fund is dealt with so as to effectuate completely the testator's intention; and that the executors are bound to hold the principal of Emily M. Buchanan's share until a proper settlement is made by her in accordance with the terms of the will.

Costs of the application to be paid out of the estate, those of the executors as between solicitor and client.

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McPHADAN v. McPHADAN—KELLY, J.—MAY 27.

*Husband and Wife—Alimony—Evidence—Cruelty—Failure to Establish—Dismissal of Action—Costs—Rule 388.*]—An action for alimony, tried without a jury at Lindsay. KELLY, J., in a written judgment, said that the plaintiff and defendant were married on the 24th July, 1918; the plaintiff was 55 years of age, the defendant was 75; each had been previously married. They lived together at Sunderland from the time of their marriage until the 11th November, 1918, when she left him, and began this action on the following day. She made charges of cruelty against the defendant, and declined to go with him to the North-West, where he proposed to make his home. He was ready and willing to receive her if she would return to him, but was not willing to continue to live at Sunderland. She refused to accompany him elsewhere. In the learned Judge's opinion, the separation is due, chiefly, if not altogether, to the plaintiff's disregard of the feelings of affection which should exist between her and the defendant. On none of the grounds set up had she established a right to alimony. The action should be dismissed—the defendant to pay such costs as are payable under Rule 388. A. M. Fulton and T. E. Anderson, for the plaintiff. R. T. Harding and W. S. Ormiston, for the defendant.