

is to go to the Park fund after paying to Harry \$15,000, as "the remaining \$20,000." The use of such language has been held not to prevent the application of the rule that the remainderman is entitled to the benefit of an accretion to the capital of the trust fund: *Paris v. Paris*, 10 Ves. 185; *Hooper v. Rossiter*, McCl. 527; *Claffin v. Dewey*, 177 Mass. 166. . . .

The direction of the testator as to investments in the purchase of land, that only real estate in Ontario yielding a rental of at least 6 per cent. per annum on the capital investment was to be purchased, indicates, I think, that he had in contemplation that the only benefit that the life tenant was to be entitled to was the income of the invested funds.

Upon the whole, I am of opinion that Edgar H. Watkins is not entitled under the direction in paragraph 21 of the will to be paid, as part of the "interest" which the trustees are directed to pay to him, the profit realised from the money invested by the trustees in the purchase of land, and there will be a declaration accordingly.

Costs out of the corpus of the "Edgar H. Watkins trust."

DIVISIONAL COURT.

DECEMBER 31ST, 1909.

KELLY BROS. & CO. v. TOURIST HOTEL CO.

Mechanics' Liens — Building Contract — Progress Estimates — Architect's Certificate — Condition Precedent — Right Arising after Action — Insurance Premiums — Delay in Completing Work — Extent of Lien — Amount Due under Contract — Percentage Withheld — Lien not Presently Enforceable — Disposition of Surplus Proceeds of Sale.

Appeal by the plaintiffs from the judgment of the local Master at Kenora in an action to enforce a lien under the Mechanics' and Wage-Earners' Lien Act for work done and materials supplied by the plaintiffs in connection with the building of an hotel for the defendants at Kenora.

The plaintiffs sought to increase to \$10,029.76 the amount for which judgment was given and their lien declared.

The work was done under a sealed agreement in writing, dated the 26th June, 1907, whereby the plaintiffs undertook to complete the whole of the work under the direction and to the satisfaction of an architect, in accordance with the specifications and drawings prepared by the architect and with the conditions of the agreement,