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HON. MR. JUSTICE KELLY.

JANUARY 24TH, 1913.

RE QUAY.

4 O. W. N. 677.

*Will—Construction—Inconsistency—Instalments of Legacy.*

KELLY, J., *held*, that a gift of \$25,000 to a legatee, was not cut down by subsequent directions to pay stated sums at certain times, totalling, in all, a sum slightly under \$25,000.

Motion by the executor of the will of the late William Quay for the construction of the following paragraph of the will . . . and the following questions were submitted:—

“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;”

1. Whether the clause in the said will providing for the payment of five thousand dollars to the said Ralph Ira Dwight Quay in the event of his marriage, is effective and capable of being enforced.

2. Whether after payment of the said sum of five thousand dollars the said Ralph Ira Dwight Quay is still entitled to receive from the estate of William Quay the semi-annual payment of six hundred dollars.

3. Whether under the said clause of said will, the said Ralph Ira Dwight is entitled to receive, in all, the sum of twenty-five thousand dollars, or the sum of twenty-four thousand, four hundred dollars.

H. A. Ward, for the applicant.

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

J. D. Montgomery, for Frederick Quay.

HON. MR. JUSTICE KELLY:—I answer as follows:—

1. The legatee is entitled on his marriage to receive five thousand dollars, if at that time there be unpaid to him (out of the twenty-five thousand dollars) that sum; if, however, the payments made to him before his marriage reduce the unpaid balance of the twenty-five thousand dollars to less than five thousand dollars, he will be entitled on his marriage to receive such balance.

2. After such payment to the legatee on his marriage, the semi-annual payments of \$600 each shall cease until the end of fifteen years from testator's death, when the unpaid balance of the \$25,000 shall be payable.

3. The intention of the testator in the paragraph under consideration was to benefit this legatee to the extent of twenty-five thousand dollars; this amount is not cut down by the later words of that paragraph dealing with the mode of payment.

Subsequent provisions of the will relate to the disposition of this bequest (and bequests to other beneficiaries) on the happening of certain contingencies; the above conclusions are subject to whatever effect these later provisions may have on this bequest, if any of these contingencies arise.

Costs of the application will be payable out of the estate; those of the executor as between solicitor and client.

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