

REX V. THOROLD PULP CO. LIMITED—FALCONBRIDGE, C.J.K.B.—
Nov. 4.

Contract—Water Taken from Government Canal—Payment for—Lease—Penalty.—Action to recover \$16,949.33 for excess of water from the old Welland canal, used or wasted by the defendants under their lease from the Dominion Government. The action was tried without a jury at St. Catharines. FALCONBRIDGE, C.J.K.B., in a written judgment, said that there was nothing in the nature of a penalty about article 9 of the lease. It was a contract pure and simple, and the cases cited did not apply. There should be judgment for His Majesty for the full amount claimed, with costs. The sum of \$300 was admittedly overcharged. The Local Registrar at St. Catharines should settle the amount for which judgment should be entered. Order for payment out to the plaintiff of the amount paid into Court in satisfaction pro tanto of the judgment. T. F. Battle, for the plaintiff. H. H. Collier, K.C., for the defendants.

RE GOODWIN—SUTHERLAND, J.—Nov. 8.

Will—Construction—Annuity—Income—Deficiency Payable out of Corpus.—On the 30th June, 1919, SUTHERLAND, J., made an order construing the will of Michael Francis Goodwin, deceased, with reference to certain questions arising thereunder: see Re Goodwin (1919), 16 O.W.N. 339. Some difficulty having arisen in settling the terms of the order, as to whether the widow was entitled to have the "insufficiency" of the income to produce an annuity of \$800 made up out of the corpus of the estate, counsel spoke to the minutes; and the learned Judge, in a written judgment, said that, if there were added to the following sentence in his reasons for judgment, "It seems to me that under clause 8 of the will the annuity of \$800 per annum, referred to, was payable to the widow only until the youngest surviving child should attain the age of 21 years," the following words, "payable out of the income from the whole estate until that time, and in case of deficiency out of the corpus of the estate, and thereafter out of the income of the one-third of the estate remaining after the realisation and division of the two-thirds of the securities in the executors' hands belonging to the estate referred to in clause 11 of the will," it would obviate any difficulty. W. Lawr, for the Toronto General Trusts Corporation. W. G. Owens, for Kate Goodwin and others. W. H. Gregory, for Mabel Goodwin and others. F. W. Harcourt, K.C., for the infants.