

apply it by rejecting the words "while the said Margaret Ann Mumby remains my widow."

In *Sherratt v. Bentley*, words somewhat similar to those which we are asked by the appellants to reject, were rejected. The words which the Court in that case refused to reject were "after the decease of Margaret Harrison," and it was pointed out by the Lord Chancellor that if they were rejected the will would have contained "two gifts quite inconsistent and repugnant." In this case, on the other hand, if the sentence which I would reject be rejected, the will is made consistent in all its parts and contains a complete disposition of the whole of the testator's property, leaving no event unprovided for.

I would affirm the order of my brother Street, and dismiss the appeal with costs.

JULY 4TH, 1904.

DIVISIONAL COURT.

# TURNER v. TOURANGEAU.

*Execution—Fi. Fa. Lands—Division Court—No Return of Nulla Bona by Bailiff of Court in which Judgment Recovered—Sale under—Execution—Validity—Change in Statute.*

Appeal by defendant from judgment of FERGUSON, J., ante 74, setting aside as void an execution against lands, and all proceedings under it, including the sale of the lands of the execution debtor thereunder, with costs.

F. E. Hodgins, K.C., for defendant.

A. H. Clarke, K.C., for plaintiff.

The judgment of the Court (MEREDITH, C.J., MACMAHON, J., TEETZEL, J.), was delivered by

MEREDITH, C.J.— . . . My late brother Ferguson, acting upon the assumption that the governing Act was 57 Vict. ch. 23, sec. 8, and following *Burgess v. Tully*, 24 C. P. 549, held that, inasmuch as there had been no nulla bona return by the bailiff of the Court in which the judgment was recovered, the execution against lands was a void proceeding, and that everything founded upon it was void also.

But for the change which was made in the language of sub-sec. 5 of sec. 8 of 57 Vict. ch. 23, when the statutes were last consolidated, and that provision became incorporated in sec. 230 of R. S. O. 1897 ch. 60, I would . . . agree