

MACMAHON, J., dismissed the appeal with costs to defendants in any event.

Boyd, C.

DECEMBER 7TH, 1903.

CHAMBERS.

RE MCKENZIE.

Will—Legacy—Ademption—Parol Evidence—Issue Directed to be Tried.

Motion by executor under Rule 938 for order declaring construction of will of William McKenzie, late of the town of Kincardine, farmer. The will was divided into clauses:—(1) directing payment of debts, etc.; (2) a bequest of \$500 "to my housekeeper Flora Fraser, to be paid her as soon as possible after my decease;" (3) to the testator's brother Hugh McKenzie the right to use and occupy a house and lot in Kincardine and to use fruit growing on the lot; (4) a devise to Flora Fraser for life of a house and lot in Kincardine; (5) "I will, devise, and bequeath to Hugh Graham, executor and trustee of this will, all my real and personal property . . . after the payment of the bequest in clause 2, and when the bequests in clauses 3 and 4 expire by the death of the parties mentioned therein, in trust to support and maintain . . . Flora Fraser for . . . life." (6) "Whatever remains of my estate after the keep and support of . . . Flora Fraser during her life shall be paid over to my nephew John McKenzie, his heirs and assigns forever." The question was as to ademption of the legacy of \$500 by payments in the testator's lifetime.

C. C. Ross, for executor.

J. H. Moss, for Flora Fraser.

T. D. Delamere, K.C., for the other beneficiaries.

Boyd, C., held, following *Re Smythies*, [1903] 1 Ch., that this must be regarded as a legacy given merely for bounty, and not for a particular purpose. No purpose is referred to in the will, and one cannot be imported into the case as the legal effect of acts done in the lifetime of the testator. *Re Fletcher*, 38 Ch. D. 375, referred to. Apart from the affidavits, the will contains a plain direction to pay \$500 to the beneficiary. Having regard to *Tuckett-Lawry v. Lamour-eaux*, 1 O. L. R. 364, 3 O. L. R. 577, evidence of intention is admissible, and if the parties seek to litigate further as to the effect of the evidence, an issue will be directed, but with this proviso, that if the result is that the decision in favour