

might have been heard, and this motion would have been unnecessary.

One of Mr. Arnold's arguments was that the appellant had not given the security required by Rule 827 (c), and so his appeal was fatally irregular. But the security required by that Rule is not essential to an appeal, but only to a stay of execution.

I therefore think the motion to confirm the setting down of the case should succeed, but, as both parties are nearly equally blameable for delay, there should be no costs.

MEREDITH, C.J.

JANUARY 7TH, 1903.

CHAMBERS.

RE HOLDEN.

*Will—Construction—Property Passing—"Now"—Stock in Trade—
Furniture—Books—Legacy—Incomplete Words*

Motion upon originating notice under Rule 938 for an order declaring the construction of the will of S. O. Holden, deceased, which was in these terms:—"I give, devise, and bequeath all my real and personal estate of which I may die possessed of or interested in, in manner following, that is to say, first, I give to my sister Eliza Jane Isaac the house and land with all household furniture and all stock and trade now in house and out of house with all book accounts," subject to two legacies of \$100 each. The testator was the keeper of a village shop, and shortly after making his will sold his house, land, and business, but subsequently repurchased them.

W. T. Allan, Collingwood, for the universal legatee and administratrix with will annexed.

J. Birnie, K.C., for B. F. Holden.

G. W. Bruce, Collingwood, for W. J. Holden.

MEREDITH, C.J.—Though the bequests were specific, they were specific bequests of what was generic, and they were therefore brought down to the date of the death by R. S. O. ch. 128, sec. 26 (1). if no contrary intention was expressed. See *Bothamley v. Sherson*, L. R. 20 Eq. at pp. 312-313; *Goodlad v. Burnett*, 1 K. & J. 341. In spite of the use of the word "now" (as to which see *Theobald on Wills*, 5th ed., pp. 114-115; *Jarman on Wills*, 5th ed., pp. 298-299), it is beyond question that the testator did not intend to limit his gift to property owned by him at the date of the will. The constituents of the gift of the stock in trade and book debts were changing from day to day and from hour to hour, and, as the language of the gift itself was ambiguous, the opening