The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, HODGINS, and FERGUSON, JJ.A.

M. K. Cowan, K.C., and A. G. Ross, for the appellant.

G. W. Holmes and W. A. Lamport, for the plaintiff, respondent and cross-appellant.

MEREDITH, C.J.O., reading the judgment of the Court, said, after stating the facts, that he agreed with the learned trial Judge in his conclusion with regard to the agreement with the testator, the respondent's uncle, which the respondent set up; and would agree entirely with the disposition of the case made by the judgment in appeal if it could be found that the promise of the appellant (a son of the testator and one of the executors) was a promise made in order to settle a claim made by the respondent which was doubtful or believed by the parties to be doubtful, even though it was in fact a claim that could not be enforced. But the learned Chief Justice was unable to see that the appellant's promise was of that character. Nowhere in the correspondence was any claim enforceable against the estate of the testator put forward, beyond a claim on three promissory notes; and any claim beyond that was put forward, if as a claim at all, only as being a moral obligation resting on the appellant as the possessor of the bulk of his father's estate to make good the expectations of the respondent based upon what she testified the testator had told her as to the provision for her that he had made by his will.

A mere moral obligation to do that which the promisor agrees to do is not a valuable consideration: Halsbury's Laws of England, vol. 7, para. 799.

There remained for consideration the respondent's claim to recover the amount of the two overdue notes and the overdue interest on the $1,000 note, the principal being not yet payable. The notes for $50 and $100 were overdue when the action was begun, and some interest on the $1,000 note was also then overdue; and the respondent was entitled to judgment for the amount of the two overdue notes with interest and for the amount of the interest that was overdue on the $1,000 note on the 16th September, 1915, when the action was begun.

It was argued that the testator gave the $1,000 note in satisfaction of the other two notes, except the interest upon them; but, if that was his intention, it was not clearly expressed in his letter of the 1st October, 1912, sending the $1,000 note to the respondent. This the testator, in his letter to the respondent of the 25th September, 1912, recognised, and consented to her retaining the three notes as her own property.