

his debtor. He could, I conceive, mean nothing else than he would pay out of the proceeds of the goods. This is the way in which after careful examination the case is understood by the Master of the Rolls and by the Lords Justices in *Re Empress Engineering Company*, 16 Ch. D. at pp. 129, 130, and also by Strong, V.C., in *Mulholland v. Merriam*, 19 Grant 288." The Osbornes appealed to the Supreme Court which allowed the appeal, restoring the judgment of Cameron, C.J., at the trial (sub nom. *Osborne v. Henderson*, 18 S.C.R. 698). Patterson, J.A., who delivered the judgment of the Court, follows and adopts the reasoning of Mr. Justice Maclellan in the Court below.

In *Edmison v. Couch*, 26 A.R. 537, the owner of land in consideration of natural love and affection and one dollar, conveyed it to the defendants in fee, subject to a life estate in his own favour, and subject to the payment thereof by the defendants, of certain sums to the plaintiffs, the deed being voluntary as to them. The deed contained a covenant by the defendants with the grantor to make the payments and was executed by the grantor and the defendants. Seven months later the grantee conveyed same land to the defendants in fee, for their own use absolutely, free from all encumbrances, but subject to his life estate. Held, that an irrevocable trust was created by the first deed in favour of the plaintiffs and was enforceable by them, and this trust was not affected or released by the second deed. Maclellan, J.A., at page 542: "The important question, therefore, is whether the deed (the deed of 1894) created a trust for the benefit of the daughters and grand children of the grantor which they could themselves respectively enforce, and I am of the opinion that it did. I think the case is governed by *Gregory v. Williams* (1817) 3 Mer. 582, and *Mulholland v. Merriam* (1872) 19 Grant 288. The first of these cases has been recognized as good law by the Court of Appeal in England and the other by this Court. I think this is a plainer case than *Mulholland v. Merriam*. The conveyance in that case was on condition that the grantee should pay, and then the grantee bound himself, that is, in effect, covenanted to pay certain sums to the children and grand children of the grantor. There was no express charge of the land with the payment. Here, on the other hand the land is conveyed subject to the payment, and in respect of the payment to the daughters, they are expressly to be paid thereof, that is, out of the land. Now,