

A. H. Marsh, K.C., for the applicants, contended that the capital should be applied to make up the deficiency.

E. D. Armour, K.C., for the residuary legatees and others.

J. R. Meredith, for the executors.

MACMAHON, J.:—The language of that part of the will providing for the creation of a fund to meet the annuities indicates that the testator intended that the whole fund so created should be available to pay the annuities. The fund out of which the yearly payments are to be made is a fund directed to be formed from the various sources specified in the will. There is no direction that the annuities are to be paid out of the income derived from the fund. But, even had such a direction been contained in the will, it would not have deprived the annuitants of the right to resort to the corpus to meet any deficiency in the annuities: *Mason v. Robinson*, 8 Ch. D. 411; *Illesley v. Randall*, 50 L. T. 717; *Birch v. Sherratt*, L. R. 2 Ch. at p. 649; *Carmichael v. Gee*, 5 App. Cas. 588; *Jones v. Jones*, 18 Gr. 317.

Order made declaring that the applicants, Isabella Henderson and Catharine McKenzie, are entitled to be paid the annuities of \$250 each and arrears by payment out of the corpus of the testator's death, and that any balance of their annuities remaining unpaid at the death of Janet and Margaret respectively should be paid to their personal representatives. Costs of all parties out of the estate; those of the executors as between solicitor and client.

BOYD, C.

NOVEMBER 18TH, 1902.

TRIAL.

HIME v. TOWN OF TORONTO JUNCTION.

Assessment and Taxes—Action to Set aside Tax Sale—Prior Tax Sale—Purchase by Municipality—Lien—Redemption—Costs—Interest.

Action to set aside a tax sale.

J. B. Clarke, K.C., and C. Swabey, for plaintiffs.

W. E. Raney, for defendant corporation.

A. Mills and G. Grant, for the other defendants.

BOYD, C.—No question arose as to the validity of the sale as against defendants, for the purchasers were willing to forego all claims on being recouped the amounts paid by them at the tax sale. There was a sale de facto, and there was a legal assessment for the years 1898, 1899, 1900, in respect of which the sale now under consideration was had. True, the town had under the statute, R. S. O. ch. 224, sec. 183,