The judgment of the Court (FERGUSON and MEREDITH, JJ.) was delivered by

MEREDITH, J.—From whichever point of view this bequest is looked at, it fails. The gift is of a specific nature—the interest on certain payments. It is not a gift of money charged upon or to be paid out of any particular property. The thing itself is given with particular interest.

Then if the case is to be looked at as matters stood when the will was made, the gift fails. It could then have had reference only to the payments which the testator's sons John and Albert were to have made, under the will in respect of the lands by it devised to them. These devises were revoked by the sale of the lands, and there are no payments to be made by the sons under any provision of the will. This is admitted, but it is contended that the circumstances existing at the time of the making of the will are to be ignored altogether, and the will is to be read as giving the plaintiff the interest upon any indebtedness from John and Albert existing at the time of the testator's death, and, as John then owed the purchase money of the lands, and Albert was indebted to him also for some arrears of rent, these are to be taken to be the specific payments the interest upon which the plaintiff was to have; but that contention fails upon the proper interpretation of the will. How can the words used be applicable to some arrears of rent? How can such arrears be looked upon as the payments to be made by them and in respect of which they are to be furnished with good and sufficient deeds?

Earlier provisions made in the will shew beyond reasonable question what are the payments the interest upon which the plaintiff was to be paid. And, in the face of these provisions, it is not fairly open to argument that the gift to the plaintiff was of anything other than the interest upon these payments. . . . The learned trial Judge seems to have fallen into an error in regard to the annual payments of $150.

The gift to the plaintiff fails because the thing which was given never came into existence. The lands devised to John and Albert were sold and conveyed by the testator to John, and so no payments are, or ever were, to be really made under the will by them.

It is not necessary to consider the question of the validity of the release given by the plaintiff.

Appeal dismissed with costs.

Cameron & Lee, Toronto, solicitors for plaintiff.

Cowan & McNab, Walkerton, solicitors for defendants.