

But the opinions of the other Judges caused him to doubt, and doubting to assent to the dismissal of the appeal.

MACLAREN, J.A., agreed with FERGUSON, J.A.

Appeal dismissed with costs.

FIRST DIVISIONAL COURT.

JUNE 25TH, 1920.

*RE SIMONTON.

Will—Construction—Power of Appointment as to Corpus of Fund Vested in two Persons—Joint Power not Exercisable by Survivor—Donees of Power Having no Interest in Corpus.

Appeal by James Wesley Simonton, executor of the will of William Henry Simonton, deceased, from the judgment of ORDE, J., ante 9.

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

W. S. MacBrayne, for the appellant.

E. C. Cattanaeh, for S. Griffin, executor of the alleged will of William Henry Simonton, respondent.

Shirley Denison, K.C., for Sarah Sterch and others, representing the interests of James Simonton.

J. M. Pike, K.C., for the Toronto General Trusts Corporation, trustees.

MACLAREN, J.A., in a written judgment, said that the clause of the will of the late William Simonton to be construed is contained in the following direction to his executors: "To pay to Ebenezer W. Scane . . . \$4,000, which I hereby bequeath to him in trust to invest the same . . . and to pay the interest yearly to William Henry Simonton . . . and Christy Simonton . . . in equal parts during the lifetime of said William Henry and Christy Simonton and the survivor of them, and after the death of said William Henry and Christy Simonton, then to the use of such person or persons as the said William Henry Simonton and Christy Simonton may by will appoint and nominate."

Christy died on the 12th April, 1892, intestate, and without having made any appointment or nomination with respect to this fund.