

rate agreed upon before the bargain was made; on the contrary, it was clear from the evidence on both sides that the rate of interest was not mentioned or discussed. The offer of the plaintiff to pay 6 per cent. was never accepted and had no bearing on the rights of the parties. *Rogers v. Hewer* (1912), 8 D.L.R. 288, and *Reynolds v. Foster* (1913), 4 O.W.N. 694, are clearly distinguishable on the facts. The judgment of Strong, J., in *Williston v. Lawson* (1891), 19 Can. S.C.R. 673, was in the plaintiff's favour. The learned Judge felt bound to follow the views expressed by the Chancellor in *Martin v. Jarvis* (1916), 37 O.L.R. 269.

The plaintiff should have the usual judgment for specific performance, with costs.

LENNOX, J.

MAY 28TH, 1920.

RE HAMMOND.

Trusts and Trustees—Marriage Settlement—Power of Appointment—Exercise by Will—General Devise and Bequest—Sufficiency.—Wills Act, R.S.O. 1914 ch. 120, secs. 30, 31—Discharge of Trustees upon Passing Accounts.

Motion by the National Trust Company Limited, trustees under the marriage settlement of Frederick Sidney Hammond, deceased, executors of his will, and also executors of the will of his wife, who survived him and died recently, for the advice and opinion of the Court as to the construction of the deed of settlement.

The motion was heard in the Weekly Court, Toronto.
W. Lawr, for the applicants.

LENNOX, J., in a written judgment, said that there were no children of the marriage. The deed reserved a power of appointment to the settlor, applicable in the events that had happened. It was dated the 24th September, 1909; the settlor's will was executed on the 30th September, 1909, after the contemplated marriage had been solemnised. The settlor died on or about the 17th May, 1915, and probate of his will was granted on the 14th October, 1915.

The learned Judge was of opinion that the settlor duly exercised the power of appointment conferred by the deed, by the following clause of his will: "I further give devise and bequeath to my said wife all property and estate of which I die seised or possessed."