the widow by sub-sec. 2 of sec. 4, but it is at the same time expressly provided by sub-sec. 3 of sec. 11 that the personal representative, without the consent of the widow, may be authorized to convey the land free from the dower. Under sec. 4, I think it is clear that the whole inheritance of the testator vested in the executor, and that he became, upon his appointment, the tenant of the freehold. It was argued that, because, under sec. 13, the estate vested in him by sec. 4 passes automatically away from him to the devisee at the end of the prescribed period (now three years), unless a caution be sooner registered, therefore his estate must be taken to be an estate limited to him for a shorter period than that required to convey a freehold upon him. I cannot agree to this. I think the executor, during the time he holds the estate, holds the whole of the estate which the testator was possessed of when he died (in this case the fee simple); that when the executor sells and conveys land to pay debts, he is transferring an estate which is vested in him, and not merely executing a statutory power to sell land, the title to which is vested in the heir or devisee. . . .Here the devisee had no power to assign dower. . . . At the time this action was begun the widow had no estate in the land. . . . The subsequent assent of the executor cannot relate back to the commencement of the action so as to give her a title then. Action dismissed with costs.

Blake, Lash, & Cassels, Toronto, solicitors for plaintiffs.

Shaw & Shaw, Walkerton, solicitors for defendant.

JUNE 28TH, 1902.

C. A.

LOSSING v. WRIGGLESWORTH.

Defamation—Words Not Defamatory per se—Innuendo—Onus of Proof.

Appeal by defendant from judgment of LOUNT, J., in favour of plaintiff for $50 damages and costs upon the findings of the jury in an action for libel and slander.

A certain mare had been replevied from plaintiff by one McNally, who alleged that it had been stolen from him by Humphreys, and sold to plaintiff, who knew it had been stolen. At the trial Lossing swore that he had raised the mare, and that she had never been out of his possession. The action finally resulted in his favour. Before judgment, and between its date and the date of the judgment at the first trial, which had resulted in McNally's favour, Lossing alleges that the defendant stated, falsely and maliciously, as follows, on different occasions:—"I have seen this