

Reports and Notes of Cases.

Dominion of Canada.

SUPREME COURT.

Man.] *In re ESTATE OF ROBERT MUIR v. THE* [May 18
TREASURER OF THE PROVINCE OF MANITOBA.

Constitutional law—Provincial legislation—Succession duties—Taxation—Property within province—Bona notabilia—Sale of lands—Covenant—Simple contract—Specialty—Construction of statute—Severable provisions—R.S.M., 1902, c. 161, s. 5 (Man.)—4 & 5 Edw. VII., c. 45, s. 4 (Man.)—Appeal—Jurisdiction—Surrogate Court—Persona designata.

M., who died in June, 1908, had his domicile in Manitoba and, under a verbal agreement, had erected elevators for L., also domiciled in Manitoba, on lands belonging to the Canadian Pacific Railway Company in the Province of Saskatchewan. Until fully paid for the buildings were to remain the property of M. who was to retain possession and operate the elevators and all net revenues were to be applied in reduction of the price for which they had been constructed. M. also owned lands in Saskatchewan known as the "Kirkella Lands," which he had agreed to sell to purchasers under agreements under seal, in his possession in Manitoba at the time of his death, by which he remained owner until they had been fully paid for and then the lands were to be conveyed to the purchasers. The agreements contained no specific covenant to pay the price of the lands. The executors denied the right of the Government of Manitoba to collect succession duties in respect of these debts under the Manitoba "Succession Duties Act," R.S.M., 1902, chap. 161, sec. 5, as re-enacted by the Manitoba statute 4 & 5 Edw. VII., chap. 45, sec. 4.

Per curiam.—The debt due under the contract with L. constituted property within the Province of Manitoba and, as such, was liable for succession duty as provided by the Manitoba statute. Also, Davies, J., dissenting, that under the agreements for sale of the "Kirkella Lands" a covenant to pay should be implied, and, consequently, they were specialty debt which, as such, constituted property within the Province of Manitoba and were liable for succession duty there.

Per FITZPATRICK, C.J., and DAVIES, IDINGTON, ANGLIN, and