

HON. MR. JUSTICE MIDDLETON:—In this action temper seems to have prevailed over wisdom. In the action on the note the whole issue is as to an alleged agreement to renew the note. I do not think this agreement is proved, and if proved, I do not think it would constitute a defence in law. In the action for the amount paid the bank the defendant admits the debt and has paid it into Court—and the only question is one of costs. I can see no reason why the defendant should not pay them. As the plaintiff might have contented himself with one suit, I give no costs up to the appearance, but give costs subsequent thereto, as they were occasioned by defendant's improper attitude.

HON. MR. JUSTICE MIDDLETON.

JUNE 5TH, 1913.

RE MACKENZIE ESTATE.

4 O. W. N. 1392.

Will—Construction — After Acquired Lands—"Money and Securities"—Date of Construction—Annuity—Direction of Payment out of Certain Funds—Insufficiency of Funds—Right to Resort to other Assets—Arrears of Annuity—Statute of Limitations not Applicable to—Trust.

MIDDLETON, J., *held*, that land purchased after the making of a will could not be properly comprehended under the description "money or securities," the will speaking from the date of the death. *Re Dods*, 1 O. L. R. 7 and *Re Clowes*, [1893] 1 Ch. 215, followed.

That where there is a gift of a specific annuity to an annuitant a subsequent direction as to where the funds are to be found to pay the same does not limit the annuity to the income of such funds.

Kimball v. Cooney, 27 A. R. 453, followed.

Motion argued on 28th May for determination of certain questions arising in the administration of the estate of Daniel Macleod Mackenzie, who died on the 30th October, 1889.

Elliott, K.C., for executors. •

Bell, K.C., for the Ruddys and others in the same interest.

Clement, K.C., for the estate of the deceased widow.

HON. MR. JUSTICE MIDDLETON:—The testator left him surviving a widow; no children. By the fourth clause of his will he gave to his wife an annuity of two hundred dollars