

this, and the evidence did not warrant the finding that the defendants had been guilty of negligence in leaving the car where they did; they were not liable for the loss of the goods in question.

Appeal allowed with costs.

*Forrester* for the plaintiff.

*Aikins, Q.C.*, for the defendants.

Full Court.]

[April 4.

SIMPSON v. STEWART.

*Devolution of Estates Act—Proof of executors' title in ejectment—Probate sufficient evidence of will—Evidence of death—Evidence of identity.*

This was an action of ejectment tried at the last Fall Assizes at Portage la Prairie. The plaintiff claimed title under a patent from the Crown to Alexander Smith, who lived in Scotland, and died there in 1891, and under his will, which made the plaintiffs his executors, and of which ancillary probate had been granted by the Surrogate Court here.

The plaintiffs produced the patent and the probate, and gave some oral evidence of the identity of the patentee with their testator, and of their own identity, and of the death of the patentee. The defendant claimed under a tax sale deed which he put in and by length of possession, but no other evidence to support these claims were given, and his counsel relied on his objections to the plaintiffs' evidence. These objections were as follows:

(1) That in an action of ejectment the plaintiff claiming under a will must produce and prove the original will or a properly certified copy of it, and that it was duly executed so as to pass real estate.

(2) That sufficient evidence had not been given to prove the identity of the patentee, and of the executors and the death of the patentee.

Plaintiffs had a verdict, and the defendant appealed.

*Held*, that the Devolution of Estates Act, R.S.M., c. 45, s. 21, taken together with the Manitoba Wills Act, R.S.M., c. 150, s. 20, and the Surrogate Courts Act, R.S.M., c. 37, ss. 17, 18, 20, and 22, have made such a change in the old law that the probate of a will is the necessary and only admissible evidence of the title of the executors claiming in ejectment. The statute vests the land in the "personal representative" as such, and the executors are not clothed with that character until probate is granted to them.

*Held*, also, that slight evidence of identity of the parties in such a case will be sufficient when the names are identical, and that the evidence given in this case was ample.

Appeal dismissed with costs.

*Perdue* for plaintiffs.

*Howell, Q.C., J. D. Cameron*, and *James* for defendant.