Moss, J.A.—The legacy duty is properly deducted from the legacies, and should not be paid out of the residue, and the executors have no discretion to pay such duty out of the residue: per Armour, C.J., in Manning v. Robinson, 29 O. R. 483. There is nothing affording any reason for saying that the executors were bound to pay the pecuniary legacies, or any of them, before the expiration of one year from the testator's death. Therefore, none of the pecuniary legacies bear interest from the testator's death. As M. T. Herrington is entitled to pay off any portion of the principal money of her mortgage at any time, there was nothing to prevent the executors, if satisfied of the sufficiency of the funds in their hands for other purposes, from exercising their discretion in favour of paying her legacy by crediting it against her mortgage, before the expiration of one year from the testator's death. The legacy of $200 to William Purvis, who died some days prior to the decease of the testator, intestate, and left surviving several children, lapsed. Costs out of the estate.

S. J. Young, Trenton, solicitor for executors.

McEvoy & Perrin, London, solicitors for residuary legatee.

Ferguson, J.

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TRIAL. January 27th, 1902.

CANADIAN BANK OF COMMERCE v. TOWN OF TORONTO JUNCTION.

Municipal Corporation—Not Liable for Costs of Advertising Tax Sale Ordered by Treasurer — Absence of By-law or Resolution of Council—R. S. O. ch. 224, sec. 224.

Warwick v. County of Simcoe, 36 C. L. J. 461, approved.

Action to recover $462.50, amount of a bill of the York Leader & Publishing Co. for advertising a sale of lands for arrears of taxes. The company assigned the claim to plaintiffs.

W. H. Blake, for plaintiffs.

C. C. Going, Toronto Junction, for defendants.

Ferguson, J.—Mr. Jackson, the treasurer of defendants, indorsed on the letter of March 5th, 1900, notifying him of the assignment to the plaintiffs, as follows:—"Whatever amount may become due to the 'Leader & Recorder' for advertising tax sale for 1900, will be paid by me to the Canadian Bank of Commerce." . . . On September 29th,