

to the time of the bringing of the action not applying where the person setting them up was not really entitled to obtain them. *Trice v. Robinson* (1888) 16 O.R. 433, distinguished.

*Clute*, K.C., for plaintiff. *Shepley*, K.C., and *R. H. Green*, for defendants.

Anglin, J.]

IN RE ZIMMERMAN.

[April 20.]

*Dower—Equitable charge—Legacies—Mortgage.*

A testator devised a farm to his son subject to the payment by him of certain legacies. The son mortgaged the farm, his wife joining to bar her dower, and paid the legacies out of the proceeds. The son died seized of the farm and the mortgage was then in force:

*Held*, that the son took under the will the legal seisin in the farm and not a mere equitable estate and that his widow was entitled to dower out of the full value of the land.

*McLaughlin*, K.C., for the widow. *Harcourt*, for the infants.

Teetzel, J.]

IN RE CHAMPAGNE ST. JEAN & SIMARD.

[April 21.]

*Executor and administrator—Costs of unsuccessful action—Personal estate exhausted—Right to resort to real estate.*

An executor without direct authority or obtaining indemnity brought an action to recover a sum of money alleged to belong to the testator, and this action was dismissed with costs, the personal estate being insufficient to pay the costs of the opposite party.

*Held*, that though the general rule is that an executor acting in good faith is entitled to be recouped his costs of an unsuccessful action, this rule would not justify the executor resorting for this purpose to specifically devise real estate.

*Chrysler*, K.C., for applicant. *G. F. Henderson* and *J. M. Hall*, for adult defendants. *Bethune*, for infant defendants.

Meredith, C.J.C.P., MacMahon, J., Teetzel, J.]

[May 5.]

REX v. POLLAKOFF.

*Profanation of the Lord's Day, C.S.U.C., c. 104, s. 1 and 13—Canada Evidence Act, 56 Vict., c. 31, s. 3—General and special act—Implied repeal.*

The defendant had been convicted before R. E. Kingsford, one of the Police Magistrates in and for the City of Toronto, for exercising his ordinary calling on Sunday.