

J. C. Judd, London, for executors.

W. H. Barnum, Dutton, for widow.

J. M. Glenn, K.C., for Dugald Crawford.

MEREDITH, J.:—The testator's first care, in his will and in that codicil, is that the wants of his widow shall be satisfied; and that which remains only is to go to his collateral relatives. The codicil makes it plain that the executors may have recourse to the real estate to satisfy the widow's wants, if need be. The wants of the widow, in case of her needing more than is given to her in the first three clauses of the first paragraph of the will, are to be supplied by the executors by drawing upon the testator's property. In the circumstances of this case, the real estate can be drawn upon only by pledge or sale. The executors have power to so draw upon it, in the circumstances and for the purpose mentioned; this confers upon them implied power, at least, to sell or mortgage for that purpose, in these circumstances. Order declaring the opinion of the Court accordingly. Costs out of the estate; those of the executors as between solicitor and client.

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OSLER, J.A.

JUNE 30TH, 1902

C. A.—CHAMBERS.

DAVIS v. HORD.

*Appeal—Leave—Action for Slander—Costs—Apportionment of.*

Motion by defendant for leave to appeal from order of a Divisional Court, ante p. 418.

The same counsel appeared.

OSLER, J.A.—This is not a case in which leave should be granted. There is no good reason why a judgment framed as is the judgment at the trial in this case should not lead to the same result as the former rule. See *Sparrow v. Hill*, 8 Q. B. D. 479, and *Jenkins v. Jackson*, [1891] 1 Ch. 89. The practice is right, but it is even more convenient that it should be settled. In every case the trial Judge can shape the judgment so as to express an intention as to the incidence of the costs. Motion refused with costs.

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BRITTON, J.

JUNE 30TH, 1902.

CHAMBERS.

RE McMILLAN.

*Will—Devise of "Chattels, Money, and Notes"—Mortgage Undisposed of by the Will Passes under the Word "Chattels."*

Application by the executors of the will of Isabella McMillan (under Rule 938) as to whether Isabella McMillan