

HON. MR. JUSTICE LENNOX.

MARCH 10TH, 1913.

HONSINGER v. HONSINGER AND SMALL.

4 O. W. N. 945.

*Will—Construction—Charge on Lands — Annuity — Provision for
Firewood and Medicine—Arrears.*

LENNOX, J., gave judgment for plaintiff for \$130 and for a declaration that she was entitled to an annuity of \$100 and yearly medical expenses not exceeding \$25 charged on certain lands in an action brought by the widow of a testator against her son to whom the lands were devised.

Action by Esther Honsinger, widow of John Honsinger, to recover from George Honsinger, a son of deceased, the sums and allowances charged on the lands devised to him by his father in favour of plaintiff, and for a declaration that her claim is a charge on the land in priority to all estates and interests of defendants in the land.

James C. Haight, for the plaintiff.

Nicol Jeffrey, for the defendant Honsinger.

HON MR. JUSTICE LENNOX: The defendant Honsinger derives title to the land in question in this action under the will of his father John Honsinger, deceased. The defendant Small is a mortgagee of these premises under a mortgage from his co-defendant and he takes subject to the terms of John Honsinger's will. Small was served with the writ and appeared by solicitor but did not plead to the statement of claim. The pleadings have been noted closed as against him and proof was given of service of notice of trial upon his solicitors. This defendant was not represented at the trial.

Counsel for defendant Honsinger asked for leave to plead the Statute of Limitations, and I have decided that this is a case proper for such an amendment, and he will be at liberty to set up this defence accordingly.

The plaintiff is not bound to reside in the house mentioned in the second paragraph of her husband's will in order to be entitled to the benefit of paragraph three any more than she would be compelled to live there to entitle her to get the \$25 a year—they are both in addition to the house and independent of it. It may well be that she would have to accept delivery of the wood upon or within a reasonable distance of the farm. If she is not keeping house at all she is not entitled