

A very simple and plain method was suggested on the argument—an action brought by the company to set aside the alleged submission and a declaration that it is not a submission by the company with an injunction against the estate proceeding with the proposed arbitration would answer all ends—an interim injunction would, no doubt, be granted.

If such an action be brought within 10 days, costs of this motion will be costs in that action to the estate only: if not, the costs will be paid to the estate forthwith after taxation.

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HON. SIR. G. FALCONBRIDGE, C.J.K.B.

NOV. 9TH, 1912.

TRIAL.

MACKAY v. MCKAY.

4 O. W. N. 300.

*Will—Devise—Arrears of Taxes—Payable by Devisee—Chattel Mortgage—Account—Costs.*

Action by devisee against executors for a declaration that he was entitled to certain lands devised to him free and clear of taxes and other incumbrances.

FALCONBRIDGE, C.J.K.B., *held*, that plaintiff was entitled to the lands in question upon payment of the arrears of taxes and certain other amounts chargeable against him including therein the costs of the action and counterclaim.

Action against executors for a declaration that plaintiff was entitled to certain lands devised him by the testator, free of taxes and other incumbrances, tried at Sandwich.

Rodd, for the plaintiff.

Gundy and Brackin, for the defendants.

HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B.:—The first question is as to the plaintiff's claim that the lands devised to him are to be exonerated from the payment of arrears of taxes accrued before the death of the testator. As to this I find against him.

Very elaborate written arguments were put in, which owing to some misunderstanding did not reach me until after vacation, and I adopt the contention put forward by the defendants:—