Boyd, C., and Robertson, J.] [Feb. 10.

IANSON *v.* CLYDE.

Executor and administrator—Judgment against executors—Evidence of testator's debt—Endorsement of note by executors—"without recourse"—Devolution of Estates Act—Caution—After twelve months—Effect of—"In the hands" of executors—Estate—Devise.

A judgment against executors of an estate is only prima facie evidence of its being for a debt due by the testator, and the parties interested in the real estate are at liberty to disprove it.

In an action by a judgment creditor on a judgment recovered on a note discounted by him, which note was received by the executors for the sale of personal property of the testator and endorsed "without recourse" to the plaintiff,

Held, that the endorsement of the note by the executors would not make it a debt of the testator in the hands of the endorsee.

Held also, that the effect of the Devolution of Estates Act and amendments, acted upon by the registration of a caution under the sanction of a County Judge after the twelve months has expired, is to place lands of a testator again under the power of his executors so that they can sell them to satisfy debts, and that the expression, "in the hands" of executors, as applied to property of the testator, is satisfied if it is under their control or saleable at their instance, and that the operation of a devise of lands is only postponed for the purposes of administration, and that the estate does not pass this through the medium of the executors but by the operation of the devise.

Aylesworth, Q.C., and *S. H. Bradford*, for appeal. *Clute*, Q.C., and *Yarnold*, for defendants other than executors. *Ormiston*, for John Clyde, an executor. *Slaght*, for Thomas Allin, the other executor.

MacMahon, J.] Feb. 14

TRUSTS AND GUARANTEE COMPANY *v.* TRUSTS CORPORATION OF ONTARIO.

Limitation of action—Annuity by will—Charge on lands—Arrears—Disability.

A testator by his will devised land to two of his sons, their heirs and assigns forever, subject to the payment of $200 per annum for the benefit of another son (a lunatic) for his life, payable "to the person who may be his guardian," and died in 1872. The son lived with his mother, and payments were made to her for his support from 1880 to 1889, the last payment being made in February, 1889. The plaintiffs were appointed committee for the son in December, 1898.

Held, following *Hughes* v. *Cole* (1884) 27 Ch.D. 231, that the annuity was charged on the land, and that the right to recover was not barred as to future payments of the annuity out of the land; that the payments made to the mother were discharges pro tanto of the annuity; that as the son was