

RIDDELL, J.:—In working out the judgment made in this matter, 12 O. W. R. 1009, the question arose whether Margaret Paxton, the devisee named in paragraph 3 of the will, was excluded from any share in the residue by reason of the devise to her of the homestead farm (subject to the life estate of the widow).

Those who are excluded are "all those to whom legacies are above given in this my will." The testator has accurately distinguished between "devise" and "legacy," using the former word in the case of realty, the latter in the case of personalty. The devise to Margaret Paxton is not a legacy, and she is not excluded.

This was my former conclusion, as appears from the memorandum attached to the judgment, but it was proper that my attention should again be called to the matter, lest an error should have crept in by inadvertence.

The executors will have their costs of this application.

---

FEBRUARY 12TH, 1909.

DIVISIONAL COURT.

SOVEREIGN BANK v. McINTYRE.

*Promissory Note—Action on by Bank—Defence—Failure of Consideration—Onus—Inference from Facts—Purchase of Shares.*

Appeal by defendant from judgment of MAGEE, J., in favour of plaintiffs in an action on a promissory note.

J. M. McEvoy, London, for defendant.

J. B. McKillop, London, for plaintiffs.

The judgment of the Court (MULOCK, C.J., ANGLIN, J., CLUTE, J.), was delivered by

MULOCK, C.J.:—It appears that the defendant had some negotiations with one Karn, agent at London of the plaintiffs, with regard to the acquisition of 10 shares of the capital stock of the plaintiffs, and that the defendant made a written