

will: Jarman on Wills, 6th ed., p. 1990; Legh v. Earl of Warrington (1733), 1 Bro. P.C. 511. Even in the case of an executor a direction to him to pay debts, if he is devisee of real estate, will cast them on the realty so devised: Jarman, p. 1993; Henvell v. Whitaker (1827), 3 Russ. 343.

The conclusion being that the fund to be created by the conversion which the trustees are directed to make, is a fund out of which his funeral and testamentary expenses and his debts, including mortgage debts, are to be paid, the next question is how these are to be borne by the beneficiaries.

Reference to Jarman, p. 2033; Tench v. Cheese (1855), 6 DeG. M. & G. 453, 467.

The fund which the testator had created was a mixed fund; and, therefore, the burden of the charge must be contributed to ratably by the personalty and realty from which the fund is to be derived, which is the whole of the real and personal estate except the life estate devised to the appellant.

The judgment below should be varied accordingly; costs of the motion and appeal to be paid out of the mixed fund.

FIRST DIVISIONAL COURT.

FEBRUARY 21ST, 1916.

***DAVIS v. TOWNSHIP OF USBORNE.**

Highway—Nonrepair—Injury to Traveller—Dangerous Ditch—Horse Shying at Motor Vehicle and Overturning Buggy and Occupants into Ditch—Duty of Municipal Corporation—Keeping Road Reasonably Safe for Public Travel—Additional Danger from Motor Vehicles—Failure to Perform Duty—Cause of Injury.

Appeal by the plaintiff from the judgment of the Senior Judge of the County Court of the County of Huron, after trial of the action without a jury, dismissing it with costs.

The action was brought to recover damages for injuries sustained by the plaintiff owing, as she alleged, to the default of the defendants in the performance of the duty, imposed upon them by sec. 460 of the Municipal Act, of keeping in repair the roads under their jurisdiction.

The injuries were met with while the plaintiff was being driven by her son, after nightfall, in a covered buggy drawn by a single horse, on the London road, and were caused by the horse taking fright at a motor vehicle coming in the opposite