

months to continue the trade, must be taken as an assent by them to the retention by her not only of the hotel, but of the goods with which it was furnished and the license law complied with. And, as there is nothing to shew that the executors acted under any mistake as to the financial position of the estate, they stand in the ordinary position of executors who have assented to a legacy and delivered over the articles bequeathed. They cannot recover them back without shewing special circumstances which are not shewn here. They still have real property vested in them, and not in the widow's possession, sufficient for the payment of debts, so that there does not appear to be actual damage to any person.

As legatee for life, she would, so soon as the legacy was assented to, be entitled to the possession of the goods on proper acknowledgment of the articles received and her limited rights therein.

It is true the bequest is not directly to her, but to the executors themselves in trust for her, but, no other arrangement having been made, it could only be as beneficial owner during widowhood, under the gift to them as trustees, that she was placed in possession, and, as each executor can assent to legacies either to the executors jointly or to others, the assent has not the less been given and the position turned into that of cestui que trust and trustees. With regard to the hotel itself and the land which goes with it, there may be some question. Under the Devolution of Estates Act and amendments the realty vests, on the testator's death, in the personal representatives, and, unless they convey to the devisees or heirs, remains vested in them for 3 years, when, unless the personal representatives register a caution that it is still required by them, it vests in the devisees or heirs, but still remains liable for the debts.

It does not become personal property, but both the realty and personalty are assets in the hands of the personal representatives for payment of debts, though the personalty is still the primary fund (*Re Hopkins*, 32 O. R. 315), unless in the case provided for by sec. 7 of the Act, where there is a residuary gift of both, and then the two classes share ratably, unless a contrary intention appears in the will.

The effect of an executor's assent in giving a legatee a right to recover personalty bequeathed to him, can perhaps hardly be extended to the real property so as to entitle the