

and niece named, the said house and contents "as well as any money or securities which may remain after the death of my wife C. M."

*Held*, affirming the judgment of TOWNSHEND J., that the disposal of any property which might remain over at the death of C. M., shewed an intention to give to C. M. the disposition of the property during her lifetime. *In re Thompson's Estate*, 14 Ch. D. 263, and *Constable v. Bull*, 3 De. G. & Sm. 411, followed.

*D. C. Fraser*, K.C., in support of appeal. *H. McInnes*, K.C., for executors. *H. Mackenzie*, for Catherine McDonald.

Full Court.]

GRAY v. HARRIS.

[Jan. 17.

*Distress—Lodger—Action by claiming damages—Practice and procedure.*

In an action claiming damages for the alleged wrongful distress of a piano, the property of plaintiff, the statement of claim set out; (1) That plaintiff was a lodger; (2) That her property was seized and illegally removed, for which she claimed compensation under the provisions of R.S.N.S. c. 172, s. 15; (3) that the property seized and removed was only returned under order of the Judge of the County Court.

*Held*, per TOWNSHEND, J. That as the whole of s. 15 was necessarily made a part of the statement of claim, its provisions, read in connection with the other facts alleged, disclosed a good cause of action.

*Held*, per MEAGHER, J. That as the cause had been fully tried out and no hardship could result, the cause should be treated as if the pleadings were correct, although there were defects on both sides.

*Held*, per RITCHIE, J. That the statement of claim disclosed no cause of action, and the appeal should therefore be allowed and the action dismissed; although it appeared that the defendant had no defence to the cause of action proved at the trial, but not disclosed by the statement of claim.

*Harrington*, K.C., for appeal. *O'Connor*, and *Parsons*, contra.

Full Court]

FRASER v. McCURDY.

[Jan. 17.

*Contract—Action for goods sold—Burden of proof—Judgment of Trial Judge reversed—Costs.*

In an action for the price of goods sold and delivered, judgment was given in favour of defendants on the trial, on the ground that the denial of the sale and delivery, threw the burden of proof upon the plaintiffs, and that they had failed to satisfy this burden, there being a conflict of evidence between plaintiff's traveller E., and the defendant M. It appearing from the evidence that the ground upon which the case was determined at the trial was wrong, the evidence of E. being corroborated in a number of particulars, and there being a preponderance in favour of plaintiffs,