

Act could not apply, as there was not any sale by the son to his father, the goods reverting to the father when the tenancy ceased. But if it was a seal, there was an immediate delivery, and an actual and continued change of possession within the words of the statute.

McCarthy, Q.C., and *Milligan*, for appeal.
C. Robinson, Q.C., and *McFadden*, contra.

From C. P.]

SILBY V. DUNNVILLE.

Municipal corporation—Contract not under seal.

The judgment of the Court of Common Pleas (31 C. P. 301), affirmed on appeal.

McCarthy, Q.C., and *Nesbitt*, for the appellant.

Bethune, Q.C., and *Bruce*, for the respondent.

COMMON PLEAS DIVISION.

Osler, J.]

LEITCH V. McLELLAN.

Dower—Life estate—Husband and wife—Estate by entirety—Survivorship—Right to set up breach of covenant.

Where a husband died entitled to the reversion in fee in certain lands expectant on a life estate therein,

Held, that dower could not be claimed thereout, in that the husband had never been seized during coverture of inheritance or possession.

A lease for life to a husband and wife makes them tenants of the entirety, so that the whole accrues to the survivor.

The demandant who was a stranger to the estate, was held not entitled to set up that there had been a forfeiture of the life lease by non-payment or other breach of covenant.

Jacobs, for the demandant.

Guthrie, Q.C., and *Watt*, for the defendant.

CHANCERY DIVISION.

Proudfoot, J.]

[April 11.]

McCLENEGHAN V. GREY.

Demurrer—Temporalities Act—Demurrer for want of parties—Rule 189.

Demurrer. The action was brought by M. and H., wardens of St. Paul's Church, at Woodstock, on behalf of themselves and all the other members of the congregation of the said church, against the defendants, the executors of one W.

The statement of claim stated the will of W., made April, 1876, appointing the defendants her executors, and giving and bequeathing unto the incumbent of St. Paul's Church, for the time being, certain funds to be used for the use and relief of the poor of the said church, to be dispensed by the said incumbent. It then alleged that the defendants refused to permit the incumbent to dispense the funds, and were misapplying them; and claimed to have the estate administered, and to have a declaration that the incumbent was entitled to distribute the funds.

The defendant demurred on the grounds (i.) that the defendants had no title to maintain the action; (ii.) that the proper person to require the defendants to account was the incumbent, and no reason was shown why he was not a party.

Demurrer allowed for:—

(i.) Even if the incumbent was a member of the congregation, in whose behalf the plaintiff sued, which could not be assumed, yet the bequest was not to the congregation, but to the incumbent, whose position was certainly different to that of the churchwardens and the other members of the congregation.

(ii.) The Temporalities Act did not empower the churchwardens to sue for a bequest such as this, which was not to the church generally, but only to a particular class—the poor of the church.

(iii.) This was not to be, considered properly, a demurrer for want of parties. It was a demurrer for a matter of substance—that the plaintiffs had no right of action.

Clowes v. Hilliard, L. R. 4 Ch. D. 413; and *New Westminster Brewing Co. v. Hannah*, 24 W. R. 899, followed; *Werderman v. Societe Generale D'electricite*, L. R. 19 Ch. D. 246, distinguished.
C. Moss, Q.C., for the demurrer.
S. H. Blake, Q.C., contra.