

2. The lessees would have been entitled to the straw and the manure which had been piled into heaps, but for their covenants which preclude them from making any claim; and that the covenants may be construed or held to operate as a reservation of the straw and manure to the lessor to be dealt with in the stipulated manner, and as the lessees' right or power and obligation so to deal with it came to an end with the death of the lessor it passed to her representatives unrestricted thereby.

Snetzinger v. Leitch (1900) 32 O.R. 440 referred to.

DuVernet and Heggie, for plaintiffs. *Shepley*, K.C., and *E. G. Graham*, for defendants.

Meredith, C.J.C.P.]

RE MACKEY.

[July 24.

Will—Devise—Of bonds—Specific legacy—Succession duty.

A testator possessed of a considerable number (more than 5) of \$1,000 debentures, bearing interest at four per cent., of a certain city both at the time of making a codicil to his will and at the time of his death by the codicil devised to each of the two devisees "one debenture of (the city) for the sum of \$1,000, bearing interest at four per cent. per annum" and directed "that if I should deliver over any of the said debentures in my lifetime to any of the above legatees, such delivery shall be considered and taken as a satisfaction of the legacy of the person to whom it is so delivered." He had in previous clauses bequeathed to each of five named persons one debenture of (the city) for the sum of \$1,000, bearing interest at four per cent.

Held, that the legacies to the two legatees were not specific legacies: and that even if they had been the legatees were not entitled to receive them free of succession duty and the executors should either deduct or collect the duty before paying them over legacies.

Gorman, K.C., for executors. *Hogg*, K.C., for residuary legatees. *D'Arcy Scott* and *R. G. Code*, for other legatees. *Gideon Grant*, for H. Mackey.

Meredith, C.J.C.P.]

MCINTYRE v. MUNN.

[July 24.

Judgment—Leave to sign—"Debt or liquidated demand."

The defendant having entered into an agreement to manufacture for and deliver timber to the plaintiff received from him certain advances in money exceeding the value of the timber actually delivered and failed to complete his contract. No adjustment of accounts took place nor was the amount to be paid for the delivered timber ascertained. In an action to recover the balance of the advances overpaid,

Held, that the claim was not a debt or liquidated demand within the meaning of Con. Rule 138 and an order of a local judge giving leave to sign judgment under Con. Rule 603 was set aside.

Kilmer, for appeal. *Ludwig*, contra.