

All the acts of the defendant which formed the subject-matter of this action were the acts of the defendant as commissioner, while in the exercise of his office, and notice of action not having been given, the plaintiff cannot succeed. To mark the disapproval of the Court on the part of the defendant in not making out a proper conviction and order for the forfeiture and destruction of the liquor, I think he should be deprived of the costs of this appeal.

Appeal dismissed without costs.

RIDDELL, J., gave reasons in writing for arriving at the same conclusion, being of opinion, however, that as regards the claim for damages for the destruction of the liquor, the defendant was not entitled to notice of action, and the plaintiff had the right to have the matter submitted to a jury. As, however, the plaintiff could prove no actual damage in this respect, the liquor having to be destroyed in any case, the most he would be entitled to on a new trial would be nominal damages, a result which would not warrant the Court in granting that relief.

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MEREDITH, C.J.

MAY 11TH, 1911.

RE JEBB.

*Will—Construction—Devise—Estate in Fee—"In Case of the Decease"—Effect of Wills Act—Vendors and Purchasers Act.*

Application under the Vendors and Purchasers Act.

A. Cowan, for the vendor.

R. U. McPherson, for the purchaser.

MEREDITH, C.J.:—This is an application under the Vendors and Purchasers Act, and the question is as to the estate which the vendor, Charles Francis Bond Head Jebb, took in the south half of lot 1 in the 14th concession of the township of West Gwillimbury, in the county of Simcoe, under the will of his uncle Charles Jebb, dated the 12th December, 1880.

By the will the testator devised this land to his wife, Mary Ann, during widowhood, and after making that disposition the will provides as follows:—

“After my wife’s decease my real estate consisting of the