which the powers given by the Act never arise, must not be absolutely presumed to exist because the judge has acted as if they did; and, if disputable, then the warrant based upon them must stand or fall with them.

Shepley, Q.C., and *W. D. McPherson*, for the motion.

Moss, Q.C., and *Walter Macdonald*, *contra*.

FERGUSON, J.] [Sept. 30.

RE BOWEY, BOWEY *v.* ARDILL.

Will—Executory devise—Death of parties entitled—Whose heirs should take.

A testator died, leaving his farm to his wife until his daughter should attain the age of twenty-one, when it was to go to her and her heirs; but if she died before attaining twenty-one, it was to go to his wife and her heirs. The widow died before the daughter, and then the daughter died, both deaths taking place before the daughter attained twenty-one.

Held, that the widow took an executory devise which, on her death, descended to her daughter as her heiress-at-law, and that the heirs of the daughter were untolled.

Meredith, Q.C., for the plaintiff.

W. H. Blake for the defendant.

Practice.

BOYD, C.] [Oct. 14.

IN RE SARNIA OIL COMPANY.

Security for costs—Proceeding under Winding-up Act—Powers of referee—R.S.C., c. 129—52 Vict., c. 32, s. 20—Intervening shareholder out of the jurisdiction—Delay in applying for security—Appeal.

An order was made by the court delegating the powers exercisible by the court for the purpose of winding up the company to a referee, pursuant to R.S.C., c. 129, s. 77, as amended by 52 Vict., c. 32, s. 20.

Held, that power was delegated to the referee to order security for costs and to stay proceedings till security should be given by a shareholder resident out of the jurisdiction, who intervened.

Held, also, that the liquidator and others opposing the applications made by the intervening shareholder were not barred of their right to security by not applying till after the original application of the shareholder had been dismissed and appeals taken; but that the security should be limited to the costs on the appeals.

G. W. Marsh for James A. Moore.

Duncan MacMillan for the liquidator.

E. R. Cameron for mortgagees.

BOYD, C.] [October 16.

GENGE *v.* FREEMAN.

Attachment of debts—Judgment debt—Attaching order—No order for payment by garnishee—Sheriff—Return to fi. fa.—Effect of fi. fa. on goods of judgment debtor—Withdrawal of sheriff—Settlement between garnishor and garnishee—Solicitor's lien—Assignment of judgment.

A sheriff's return to a writ of *fi. fa.* goods set forth that he was notified that the amount of the judgment to be executed had been attached by a judgment creditor of the execution creditor, and that the execution debtor (the garnishee) had thereupon satisfied the claim of the garnishor. In fact, there was only an order to attach and a summons to pay over, but no order absolute.

Held, that the return was insufficient in substance, because it showed that the writ remained unexecuted without legal excuse; a garnishee order absolute would have operated as a stay of execution, but not so the attaching order and summons; the duty of the garnishee was to pay the sheriff, advising him at the same time of the existence of the attaching order, and this would have been equivalent to a payment into court.

Where purchasers are not in question, the issue of a writ of execution gives a specific claim to the goods of a judgment debtor, which remains till satisfaction of the debt; and, therefore, the withdrawal of the sheriff did not preclude further action upon the writ.

It appeared that the solicitor for the execution creditor had a lien for his costs upon the judgment obtained by his client, and also an assignment of the judgment, whereof the garnishor and garnishee both had notice.

Held, that the garnishor and garnishee should not have settled the amount garnished between themselves; and that the solicitor should have intervened and had the attaching order set aside by disclosing the assignment to himself of the debt attached.

E. Taylour English for the execution creditor.

Langton, Q.C., for the garnishor.

Middleton for the sheriff.