

Full Court.]

WARD v. MCKAY.

[Jan. 26.

*Will—Construction—Words, "my first family," "survivors."*

Testator by his last will devised the remainder of his property to A., a son by a second marriage, with a proviso that if A. died in the lifetime of his mother the latter should have the use of the property during her lifetime, and that on her death it should be equally divided among "my first family or the survivors of them." A. died in the lifetime of his mother, at the age of fourteen, and all the children of the first marriage died after A. and before the period of distribution, arrived all, with two exceptions, without leaving issue. One of the children, who had married, disposed of her share, by will, in favour of her husband.

*Held*, 1. The children of the testator alone could take under the words "my first family," and that the word "survivors" meant the survivors of those children and did not cover descendants.

2. On the death of A. the remainder vested in the children of the first family subject to being divested in favour of the survivors at the period of distribution. But, there being no survivors at that time, and nothing to divest it, it remained the property of the representatives of the children.

3. Expressions in the will explaining the reasons why testator made no other provision for the children of the first family were not intended to and did not exclude them from the right to participate in the remainder on the death of A. in the lifetime of his mother and the death of the life tenant.

*J. U. Ross*, for appellant. *W. B. A. Ritchie*, K.C., for respondent.

Weatherbe, C.J., Townshend, J., Graham, E.J.,  
and Meagher, J.]

[Jan. 26.

IN RE CAMERON.

*Magistrate's Court—Writ for service out of country—Requirement as to payment and indorsation of fees—Waiver.*

Under the provisions of R.S.N.S. (1900) c. 160, s. 5, when the defendant does not reside in the county in which the writ of summons is issued the plaintiff shall before such writ is issued deposit with the justice issuing the same a sum equal to ten