

HON. MR. JUSTICE RIDDELL.

OCTOBER 30TH, 1912.

CHAMBERS.

RE GOLDWIN SMITH AND MRS. SMITH ESTATES.

4 O. W. N. 188.

*Interpleader—Adverse Claims to Valuable Chattel—Form of Issue.*

Application to the Court to determine which of two applicants was the owner of a certain autograph album. It was the property of either Mr. or Mrs. Goldwin Smith, who resided together at "The Grange," Toronto, and who both died leaving wills, Mrs. Smith predeceasing her husband. One T. F. H. D. claims under the will of Mrs. Smith, and it was admitted that if the book was the property of Mr. Smith it passed under his will to the Art Museum of Toronto.

MASTER-IN-CHAMBERS directed an issue to be tried as to whether the book in question was the property of Mr. Smith at the time of his death, in which T. F. H. D. was to be plaintiff and the Art Museum of Toronto, defendant.

Costs to be in discretion of trial Judge.

RIDDELL, J., amended the above order by directing that the issue should be as to whether the book in question was the property of T. F. H. D. as against the Art Museum of Toronto, as T. F. H. D.'s rights under Mrs. Smith's will were not admitted.

Cos's of appeal to appellant and executors in any event.

An appeal by the Art Museum of Toronto from an interpleader order made by the Master-in-Chambers.

R. C. H. Cassels, for the appellant.

McGregor Young, K.C., for Thomas Fraser Homer Dixon, the respondent.

G. Larratt Smith, for the executors.

HON. MR. JUSTICE RIDDELL:—The late Goldwin Smith lived with Mrs. Smith at "The Grange." At the time of the death of Mrs. Smith, there was at "The Grange" an autograph book containing a collection of autographs of various persons of distinction. The book continued in the drawing room of "The Grange" until the death of Mr. Smith. Mrs. Smith made a will whereby she appointed her husband and others executors, and her husband and Mr. G. L. Smith, took out letters of probate. In this will such provisions are to be found that it may be that T. F. H. D. is the legatee of this valuable book, if it were in fact the property of Mrs. Smith. Mr. Smith also made a will under which, it is admitted, the book became the property of the Art Museum of Toronto, if it were in fact the property of the late Mr. Smith. The executors of the