

Boyd, C.]

SINCLAIR v. CAMPBELL.

[May 29.]

Security for costs — Both parties out of jurisdiction — Rival claimants of funds.

Where both plaintiffs and defendants were resident out of Ontario and both claimed a fund of \$500, bequeathed by a will, both were required to give security, each to the other, for the costs of an issue directed to be tried.

In re La Compagnie Generale d'Eaux Minerales, [1891] 1 Ch. 451, followed.

Re Societe Anonyme des Verreries de l'Etoile, 10 Pat. Cas. 290, and *Re Miller's Patent*, 11 Pat. Cas. 55, distinguished.

J. T. Small, for plaintiffs. *F. E. Hodgins*, for defendants.

Boyd, C.]

GRANT v. SQUIRE.

[May 30.]

Will — Construction — Devise — Estate — Defeasible fee — Executory devise over.

Action for the recovery of land. The plaintiffs were the widow, children, and brother of John Grant, deceased. By a memorial, dated in 1833, of a will bearing date the 7th August, 1830, it appeared that the testator devised the land in question "to his loving son Alexander, during his natural life, after the demise of his mother, and after his death, then he did bequeath the same his heir-at-law should he have any (sic); if not, he did bequeath the same to his brother John Grant."

Held, that the gift to Alexander gave, by the operation of the rule in Shelley's case, a fee simple or tail to him: *Dubber v. Trolloppe*, Amb. 453, 457. Heir is nomen collectivum and carries the fee. But the last clause of the devise imports a defeasible estate in Alexander, should he die and have or leave no child, and as he left no "lawful heir" or "heir-at-law," his fee tail or simple was defeated by the executory devise in fee simple in favour of John: *Matthews v. Gardner*, 17 Beav. 254.

D. B. MacLennan, K.C., for plaintiffs. *J. Leitch*, K.C., for defendant.