The motion was heard in the Weekly Court at Toronto.

Clara Brett Martin, for the vendor.

A. S. Lown, for the purchaser.

RIDDELL, J., in a written judgment, said that the late Alexander Pearcy, who resided in the State of Indiana, died in March, 1916, having, in the preceding month, made his last will and testament, whereby he disposed of all his property, real and personal. His executor duly proved this will in Indiana; but, as the deceased had real estate in Ontario, letters of administration with the will annexed were granted by the Surrogate Court of the County of York to Walter T. Pearcy, the attorney and nominee of the Indiana executors.

The administrator sold part of the land in Ontario to Julia Finotti, who insisted that "all the legatees mentioned in the will" should join in and execute the deed. The vendor contended that this was not necessary, and the application was made to determine the dispute.

After directing the payment of debts and funeral expenses, the testator made bequests in this form: "I give to my nieces, Mary Jane, Elizabeth, and Susan, daughters of my deceased brother Gilbert, $1,000 each." There were eighteen bequests of this character. Then there were: a legacy to a specified church in Indiana, of the income on $4,000; a legacy to a specified church in Ontario of the income on $4,000; and a direction to expend $1,000 on a suitable monument. Then followed: "All the rest and residue of my property . . . I devise and bequeath to my brothers and sisters . . . I nominate and appoint James Burling to be the executor . . . and hereby authorise and direct him with the approval of the Benton Circuit Court to sell and convey and to convert into money all lands I have in Indiana when the same can be sold at their full value and to distribute the proceeds in accordance with this will." Then followed a conditional bequest of $3,000 to another specified church in Indiana.

The administrator swore that it was necessary to sell the Ontario lands in order to pay the legacies—there were no debts.

None of the legacies was specifically charged upon the testator's land or upon any part of it. While there was an express power given for sale in respect of the Indiana land, there was none in respect of the Ontario land. All parties were *sui juris* and *compotes mentis*.

The legatees had the right to be paid (if necessary) out of the real estate: Greville v. Browne (1859), 7 H.L.C. 689; but that did