

Trial—Meredith, C.J.C.P.] SAUNDERS v. BRADLEY.

[July 27.

Will—Appointment of new trustees—Construction—Survivorship.

A testator appointed his two brothers executors and trustees of his will and provided that in the event of the death, inability or refusal to act of either of them, "then my surviving brothers and sisters or a majority of them shall by an instrument in writing appoint a new trustee," etc. The testator died in 1899, and probate was granted to the two brothers, one of whom died the same year. In 1900 by instrument in writing a majority of the brothers and sisters of the testator then living (one other brother having also died in 1899, after the testator,) appointed the plaintiff a trustee in place of the deceased executor.

Held, that the appointment was valid. The power to appoint a new trustee became operative in case either of the events provided for happened, whether in the lifetime of the testator or after his death, and it was the survivors of the brothers and sisters at the time of exercising the power, or a majority of them, who had the power to appoint.

Aylesworth, K.C., and *Kittermaster*, for plaintiff. *Riddell*, K.C., and *Dawson* for defendant.

Meredith, J.]

IN RE ASSELIN AND CLEGHORN.

[July 31.

Receiver—Equitable execution—Property to be reached—Book debts—Shares in foreign company—Insurance policy.

The provision in s. 58, s.s. 9, of the Judicature Act, R.S.O. 1897 c. 51, that a receiver may be appointed in all cases in which it shall appear to be just or convenient that such order should be made, was intended merely to expressly confer upon all the Courts that jurisdiction which, under the designation of equitable execution, had, before the fusion of law and equity, been exercised by the Court of Chancery alone.

Held, that a judgment creditor was not entitled to have a receiver appointed to receive all debts due to the judgment debtor, to receive and sell certain shares of the stock in a foreign company said to be owned by the debtor and to receive the interest of the debtor in a certain policy of insurance on the life of another, assigned to the debtor.

W. J. Elliott, for judgment creditor. *W. N. Tilley*, for judgment debtor.

Trial—Falconbridge, C.J.K.B.]

[Sept. 1.

IDINGTON v. DOUGLAS.

Landlord and tenant—Expiry of lease—Continuance of possession by tenant—Special agreement—Tenancy at will.

The reservation or payment of rent in aliquot proportions of a year, is no doubt the leading circumstance which turns tenancies for uncertain terms, into tenancies from year to year. But this payment does not create