

above into effect." This would be sufficient authority for the executors if either were alive; what either of them, if living, could do, the executor of the survivor can do: Williams on Executors, 9th ed., 204. See also *Re Stephenson*, *Kinnee v. Malloy*, 24 O. R. 395.

Declare, therefore, that Mary Ann took an estate in fee simple subject to an executory devise over if she died without issue, whereby the executors of Robert Fitzsimmons were empowered to sell and distribute the proceeds among the children of the testator's brother and sister, and that the executors of the surviving executor have power to sell. Costs of all parties out of the estate

G. E. McCraney, Milton, solicitor for petitioners.

W. I. Dick, Milton, solicitor for R. Murphy.

Mills, Raney, Anderson, & Hales, Toronto, solicitors for executors of Mary Ann Fitzsimmons.

MEREDITH, J.

MARCH 21ST, 1902.

CHAMBERS.

HENRY v. WARD.

*Arrest—Intent to Quit Ontario with Intent to Defraud—Foreigner.*

Motion by defendant for his discharge from custody under an order for his arrest made upon the plaintiffs' application by the Judge of the County Court of Essex. The defendant was never a resident of Ontario, but was a citizen of the United States of America, and a resident of and a large property owner in the State of Michigan.

J. H. Moss, for defendant.

J. M. Clark, K.C., for plaintiffs.

MEREDITH, J.—If the truth and the whole truth had been told upon the ex parte application for the order, it could not rightly have been made: see *Cozens v. Richer*, *Dra.* 167; *Fryer v. Hislop*, 1 *Ex.* 437; *Bowers v. Flower*, 3 *P. R.* 62. The defendant must now be discharged from custody, because he was not at the time the order was obtained about to quit Ontario at all, and because, upon the whole evidence brought out upon this motion, the defendant did not then intend to defraud his creditors generally or the plaintiffs in particular, by quitting Ontario.

Order made for discharge of defendant with costs.

Fleming, Wigle, & Rodd, Windsor, solicitors for defendant.

J. W. Hanna, Windsor, solicitor for plaintiffs.