

MIDDLETON, J., IN CHAMBERS.

SEPTEMBER 19TH, 1917.

*NEWCOMBE v. EVANS.

Costs—Security for, by Defendant—Action Removed from Surrogate Court—Plaintiff Propounding Will—Rule 373 (j)—Judicature Act, sec. 2 (r).

Appeal by the plaintiff from an order of the Master in Chambers dismissing a motion by the plaintiff for an order requiring the defendant to give security for the costs of an action removed from a Surrogate Court into the Supreme Court of Ontario. The plaintiff propounded a will in the Surrogate Court, and the defendant filed a caveat against probate.

G. W. Morley, for the plaintiff, contended that the defendant was the real actor; that she had originated the lis by the caveat; and, as she was resident out of the jurisdiction, must give security for costs.

Frank McCarthy, for the defendant, contra.

MIDDLETON, J., in a written judgment, said that there were some decisions in Ireland which lent colour to the plaintiff's contention; but *Ward v. Benson* (1901), 2 O.L.R. 366, was conclusive against it. See also *Moran v. Place*, [1896] P. 214. The lodging of a caveat is in no sense the institution of the proceedings in a Surrogate Court.

Where security is sought from one who is named as defendant in an issue, the question is very different. See Rule 373 (j) and sec. 2 (r) of the Judicature Act, R.S.O. 1914 ch. 56.

Appeal dismissed with costs to the defendant in any event.

MIDDLETON, J.

SEPTEMBER 20TH, 1917.

RE HAYS.

Will—Construction—Devise—Life-estate—Remainder to Heirs, Executors, Administrators, and Assigns of Life-tenant—Rule in Shelley's Case.

Motion by the executors of the will of Thomas Hays, deceased, for an order determining a question as to the construction of the will.

* This case and all others so marked to be reported in the Ontario Law Reports.