her marrying again, in case of no heirs, the property is to revert to my brothers and sisters equally."

W. M. Douglas, K.C., for the widow.

F. W. Harcourt, for the infant.

G. E. Bray, Listowel, for the executor.

G. F. Macdonnell, for brothers and sisters of the testator.

STREET, J.—There is no authority for construing the word "heirs" in the devise as "children," without a much stronger context than is found here; "heirs" must receive its technical construction, and the word "or" must be read "and," with the result that the widow takes an estate in fee simple; the provision as to her marrying again must be treated as merely in terrorem, and the devise over to the brothers and sisters, being a remainder after a fee simple, and not an executory devise, fails. The annuity to the mother is not charged upon the real estate, but is to be paid out of the personalty.

Order accordingly. The widow to pay her own costs and those of the infant and of the brothers and sisters of the testator. The executor to have his costs between solicitor and client out of the personal estate.

CARTWRIGHT, MASTER. JUNE 17TH, 1903.

CHAMBERS.

LAWRENCE v. SMITH.

Costs—Refusal of Motion for Summary Judgment—Cross-examination on Affidavits—Substitution as Discovery.

Motion for summary judgment under Rule 603.

H. M. Mowat, K.C., for plaintiff.

W. D. McPherson, for defendant.

THE MASTER.—At the argument I held that the motion could not succeed in the present position of the authorities. But I reserved the question of costs until I could examine the material. Having done so, I think the costs should be to defendant in any event. See Warner v. Bowlby, 9 Times L. R. 13.

The cross-examinations on this motion can stand as the examinations for discovery. They seem to cover the whole ground on both sides.