

It was his duty to lay before the Court the material facts that the defendant had been arrested the evening before on an invalid writ; that he had been in illegal custody down to that day, at all events, at the suit of the plaintiffs, and that he might still be so. The Court would then have been in a position to deal with the application with the same knowledge as that possessed by the solicitor, and would probably have followed Eggington's Case, 2 E. & B. 717, in holding that defendant must first be absolutely discharged from his illegal custody before he could be arrested under new process at the suit of the same plaintiffs. The application should not be treated as an appeal upon new material from the discretion of the Chief Justice in making the order of the 21st August. The application is really one to the undoubted jurisdiction of the Court to set aside, in its discretion, orders which have been obtained by the wilful concealment or perversion of material facts. A clear case has been made out for the exercise of that discretion; and therefore the order of the 21st August and the writ issued under it should be set aside, and the prisoner discharged, upon condition that no action be brought against the sheriff for the arrest or detention or for anything done under either of them.

Appeal allowed with costs here and below.

STREET, J.

SEPTEMBER 17TH, 1902.

CHAMBERS.

RE SHORE.

*Will—Construction — Legacies — Conditions — Defeasance—Payment  
before Period Mentioned in Will.*

Application under Rule 938 by two children of the testator, legatees under his will, for an order declaring them entitled to immediate payment of their legacies and of their shares of the residuary estate.

A. Hoskin, K.C., for the applicants.

A. E. Hoskin, for the widow.

F. E. Hodgins, K.C., for the executors.

STREET, J.—The applicants are not entitled to what they ask, and the executors cannot properly pay the money to them, even with the consent of the widow and of the other children. By the terms of the will a legacy was given to each of the four sons of the testator of \$17,000, to be paid as follows: \$3,000 on attaining 21; \$6,000 on attaining 24;