

In view of the serious doubt as to the shares falling under the provisions of the Judicature Act first cited, the judgment creditor might well be advised to proceed under the Execution Act.

Equitable execution is not a means of reaching assets which in their nature are not exigible, but a means of freeing exigible assets from impediments in the way of execution and reaching them when such impediments prevent them from being taken in ordinary course: *Holmes v. Millage*, [1893] 1 Q.B. 551; and clearly cannot be made the means of reaching assets not in the Province.

A receiver by way of equitable execution cannot sell; his function is to receive and hold; and sale cannot be indirectly brought about by declaring the judgment to form a charge upon the shares, unless the case can be brought within the provisions of the Judicature Act first cited: *Flegg v. Prentis*, [1892] 2 Ch. 428.

The proposed amendment of the order should not be made; the applicant must work out the situation for himself as best he can, after notice to the debtor.

MENZIES V. MCLEOD—LENNOX, J.—SEPT. 6.

Will—Testamentary Capacity—Undue Influence—Evidence—Findings of Fact of Trial Judge—Costs.—Action by the executor named in a testamentary writing to establish it as the last will and testament of Margaret Menzies, deceased, a widow, who died at the age of 84, on the 18th February, 1915, leaving an estate of about \$57,000. The plaintiff was a nephew of the husband of the deceased and sole executor of the alleged will and residuary legatee and devisee thereunder. The action was tried without a jury at Sandwich. The learned Judge reviewed the evidence in a written judgment, dealt with the questions raised as to the testamentary capacity of the deceased and the influence exercised upon her by the plaintiff, and stated his conclusion that the document propounded was not the valid last will and testament of the deceased. Action dismissed, with costs, including costs of and incidental to the commission to Daytona, to be paid by the plaintiff, with leave to the defendants to apply to have their costs paid out of the estate if they cannot be recovered from the plaintiff. J. H. Rodd, for the plaintiff. A. G. F. Lawrence, for the defendants Hedley. A. R. Bartlet, for the other defendants.