

plaintiff. Rule 1198 (b) therefore applies, and the case is one in which an order for security for costs ought to be made, and nothing would be gained by setting aside the *præcipe* order and making another order to the same effect.

Appeal dismissed: costs in cause to defendants.

Hanna & McCarthy, Sarnia, solicitors for plaintiff.

W. L. Haight, Parry Sound, solicitor for defendant.

LOUNT, J.

MARCH 20TH, 1902.

CHAMBERS.

RE FITZSIMMONS.

*Will—Death without Issue—Executory Devise—Power of Sale—Executors—Executors of Executor—Rule of Construction.*

Originating notice under Rule 938 by executors of R. Ferguson, deceased, the last surviving executor of R. Fitzsimmons, deceased. R. Fitzsimmons died in 1845, leaving surviving, his wife Elizabeth, and one child Mary Ann. The will provided as follows:—"Firstly, I give and bequeath my real estate . . . containing 50 acres to the sole and proper use of my wife Elizabeth and my child Mary Ann in the following manner and on these express conditions, viz.:—My said wife is to have, possess, and enjoy all my said real estate, subject to the payment of all my just and lawful debts, for the support of herself and my child as long as she remain my widow, and in the event of her marrying after my decease, it is my will that all my real estate aforesaid should to all intents and purposes become the sole property of my said child Mary Ann and her heirs after her, and in case of the above event my will is that the place might be leased by my executors, and the proceeds solely appropriated to the support of my said child, and in the event of my said child Mary Ann dying without issue, it is my will and desire that my said real estate should be sold, and the proceeds equally divided between the children of my brother James, and also between the children of my sister Margaret, that is, to be equally divided between the children of my said brother and sister respectively. I hereby appoint Robert Ferguson and Keiran Kelly to be my sole executors to carry the above into effect." The widow remained unmarried, and died in 1897. The daughter died unmarried in 1900.

W. Davidson, for petitioners.

J. Hales, for executors of Mary Ann Fitzsimmons.

W. I. Dick, Milton, for Robert Murphy, representing a class.