

tiffs, G. R., died and probate of his will was granted to a sister and co-plaintiff, M. S., and the action was revived in the names of the remaining plaintiffs and M. S. as his executrix, and an appeal had against the judgment was also dismissed with costs.

It appeared G. R. owned one-half of the lot and the father the other half, and that the lot had been leased to a tenant by M. O'R., one of the plaintiffs as administratrix of the father, who died in or before 1896, and M. S. as administratrix of G. R. No caution was registered under the Devolution of Estates Act.

Held, that the rent due from the tenant was garnishable for the costs payable by the plaintiffs.

Macaulay v. Rumpall (1869) 19 C.P. 284, commented on.

Judgment of STREET, J., reversed and judgment of the Master in Chambers restored.

Proudfoot, K.C., for judgment creditors. *McBrady*, K.C., for judgment debtors.

Boyd, C.]

LEDUC v. BOOTH.

[Dec. 9, 1902.

Will—Devisee—Use of house and allowance—Care in institution in the alternative—Exercise of judgment—Reasonableness.

A testator by his will gave the defendant all his estate on condition that he pay (the plaintiff) \$50 a month and that she have the use of his house and furniture for her life, and by a codicil provided that if "in his own absolute judgment he is of opinion" that it would be best for her to be cared for in some institution, he should have the right and authority to place her there (with her consent in a specially mentioned case) and that the charges for caring for her there should take the place of the use of the house and furniture and the monthly allowance. Defendant chose an institution where she would be a paying inmate and be cared for (not the specially mentioned case), but the plaintiff refused to leave the house and the defendant ceased paying the monthly allowance and plaintiff brought action for the arrears of the allowance and further construction of the will.

Held, that the will executed in 1896 indicated that the condition of the plaintiff was one that needed care and oversight; that in 1901 the defendant came to the conclusion and made it known to her that it would be for her welfare to give up housekeeping and take the benefit left to be brought into effect by his absolute judgment, that he had the right and authority to place her in a sufficiently adequate home (other than the specially mentioned case) without her consent, and that the choice he had made was such a one, and he was entitled to possession of the house and to cease paying the monthly allowance.

J. E. Jones, for plaintiff. *A. Hoskin*, K.C., for defendant.