enable him to invest the proceeds at interest for the benefit of the testator's daughters for life, the principal to be divided at their decease. This clearly differed in no respect from the power in *Gould* v. *Stratton;* on the contrary, its language is much more imperative, there being no expressed reference to the executor's discretion. It is also to be remarked that the point was quite unnecessary to the decision of the case, and that its discussion was waived by counsel. But, however this may be, the language of the subsequent decision, in *Blake* v. *Dexter*,* seems to establish clearly the doctrine for which we contend. "In general, where the trusts are necessarily connected with the official duties of the executor, and are obviously subservient to the due execution of the will, the powers and trusts vested in the executor *qua* executor, are held by necessary implication to devolve on the administrator *de bonis non, when not so expressed.*" The facts here were quite on all fours with those in *Greenough* v. *Welles*, and this decision must be regarded as plainly controlling the *dictum* in that case. There seems, therefore, to be no sound authority in this state to impeach the broad conclusion we have intimated to be the law, that such testamentary powers survive even to an administrator *cum testamento annexo.*—*American Law Review.*

CANADA REPORTS.

ONTARIO.

CHANCERY CHAMBERS.

STOVEL v. COLES.

Staying proceedings pending a re-hearing.

By analogy to the practice sanctioned by the Legislature with reference to staying proceedings pending Appeals to the Court of Error and Appeal, proceedings will be stayed pending re-hearings of decrees or orders of the Court of Chancery, upon security being given.

[April 29, 1872—*Mr. Taylor.*]

At the hearing of this cause, effect having been given to an objection that all proper parties were not before the Court, the cause was struck out, and the plaintiff directed to pay to the defendants the costs which they had incurred by the cause having been brought to a hearing. There were a number of defendants and several of them had issued execution to enforce the payment of their costs.

This motion was made by the plaintiff to obtain a stay of proceedings under these executions and under the order made by the Chancellor at the hearing, until that order could be re-heard. It further appeared that the plaintiff's solicitor had written to the solicitors for several of defendants who had issued executions, promising that the costs should be paid, and upon the strength of this promise, executions had been stayed for some days.

The plaintiff offered to pay the amount of the costs into Court.

Maclennan, Q. C. for the application. The Legislature has by Con. Stat. U. C. c. 13 § 16, established the principle that parties intending to appeal may obtain a stay of proceedings pending the appeal, upon giving security as a matter of right; and the Court of Chancery has made the principle applicable to re-hearings: *Weir* v. *Matheson* (Vankoughnet, C.); *Deedes* v. *Graham* (Re-hearing term, 1872). It is not necessary to show that if the costs are paid there is danger of their not being recovered, the Legislature does not entertain that question.

Evans, C. Moss, Arnoldi, Keefer and *Spragge* for the several defendants.

By the English authorities, of which *Gibbs* v. *Daniel*, 9 Jur. N. S. 632; 4 Giff. 41 is the leading case, the rule is established that no stay of proceedings will be granted but where circumstances make it expedient the Court may require a party entitled to receive a sum of money, or costs, to give security for repayment, if the decree should be reversed. This rule has been followed in this country in *Churcher* v. *Stanley*, 26th Oct, 1871, *Freehold B. S.* v. *Choate*, 13th Nov. 1871, and *Carradice* v. *Currie*, 5th Feb., 1872, (decisions of Mr. Taylor, unreported), and other cases; and before the Court will order security to be given it must be shown that there is danger that the costs can not be recovered if they are paid. Any right which the plaintiff had to be relieved from payment of these costs has been waived by the promise given by his solicitor that they should be paid. *Walker* v. *Niles* 3 Chy. Ch. 418, was also cited.

MR. TAYLOR, REFEREE IN CHAMBERS—It is not suggested that if the costs taxed under the Chancellor's order, are paid over by the plaintiff there will be any danger of her not recovering them in the event of the order being reversed on re-hearing. On the one hand it is contended that this must be shown before an order will be made staying proceedings; on the other side it is said this is not necessary.

* 12 Cush. 559, 569.