

two estates stand neutral; but apply for an order to have the matter determined, as both T. F. H. D. and the Art Museum claim the book.

The Master-in-Chambers made the following order:—

"1. It is ordered that the said claimants do proceed to the trial of an issue at the non-jury assizes of this Court to be holden at the city of Toronto in the county of York, to inquire whether the autograph book bequeathed by the last will and testament of the late Goldwin Smith was the property of the said Goldwin Smith at the time of his death.

2. And it is further ordered that in such issue, Thomas Fraser Homer Dixon is to be plaintiff, and the Art Museum of Toronto is to be defendant, and that pleadings be delivered by the respective parties in the same manner as in an action going to trial, and that the question of costs and all further questions be dealt with by the Judge before whom such issue shall be tried.

3. And it is further ordered that, upon the consent of both claimants, the said autograph book remain in the joint custody of the applicants pending the decision of the Court on said issue.

4. And it is further ordered that there be no costs of this application to the applicants.

James S. Cartwright."

M. C.

The Art Museum of Toronto now appeals.

I do not think the issue directed by the Master is the proper one. If the book was the property of Mr. Smith, it is admitted that the Museum is entitled to it. It was in Mr. Smith's possession after his wife's death—and not as executor apparently—it was not administered by the executors as being of Mrs. Smith's estate. In the absence of other evidence, Mr. Smith must be taken to have been the owner at the time of his death, and the Art Museum its present owner. Accordingly, if an issue is to be directed at all, it is right that the Art Museum should be a party, and the party defendant. But T. F. H. D. stands in a different position, he has no right to the book at all, unless (1) it belonged to Mrs. Smith, and (2) he is entitled thereto under her will. He would not have any locus standi in the premises at all unless he could prove that if the book were Mrs. Smith's, he would be entitled to it; the matter could not be determined by simply deciding "whether the autograph book . . . was the property of the said Gold-