

BOYD, C.—The question is, whether the legacy should be paid with interest from the date of six months after the death of the testator to the present time. Where the hand to pay and the hand to receive are the one and the same, the Statute of Limitations has no application. The claim for the \$300 subsists, and therewith interest as an accessory for the period till the fund is in hand for payment: *Binns v. Nichols*, L. R. 2 Eq. 256; *Seagram v. Knight*, L. R. 2 Ch. 628.

BOYD, C.

SEPTEMBER 22ND, 1902.

CHAMBERS.

FAIRFIELD v. ROSS.

Administrator ad Litem—Appointment of—Rules 194, 195, 196.

Motion by the plaintiff for an order appointing an administrator ad litem to the estate of M. Fairfield, deceased.

H. L. Drayton, for plaintiff.

R. C. Clute, K.C., for defendants.

BOYD, C.—The action is to recover the estate of a person deceased, who died without will, and who conveyed the estate in question to the defendants before death. The action is brought by the sole next of kin—no personal representative having been appointed. The application was to appoint the plaintiff by summary order under Rule 194. For reasons given in *Hughes v. Hughes*, 6 A. R. 380, upon the original of this Rule, I am precluded from making such an order, as the case does not fall within the provisions of the Rule. Nor do I think that an order under Rule 195 would help the plaintiff. That authorizes no more than the grant of limited administration ad litem; but the object of this suit is substantially to get in the whole estate—it involves general administration according to the practice of the court: *Dowdeswell v. Dowsdeswell*, 9 Ch. D. 306; Rule 196. The very frame of the Rule indicates that it is not applicable to the case of a plaintiff who, without right or title, has commenced an action, and then seeks to legalize his illegal act by an order of the Court. The Rule applies to a case where “in an action,” i.e., an action validly begun by a competent plaintiff, “representation of an estate is required” as a condition for its effective prosecution, and thus in a proper case an administrator ad litem may be appointed.

Application refused with costs.