

said to be worth respectively \$100 and \$175. None of these was included in the inventory filed. Endorsements in writing on the debenture are alleged to have been made and signed by the intestate in his lifetime as follows: "March 1st, 1914. After my death pay to my wife, Ida Oke, \$7,000 of this debenture with interest. William Oke." "The remaining \$500 to be used in case of my death for funeral expenses and other debts. William Oke."

In this action the plaintiff alleged that the defendant had converted the debenture and the watch and ring to her own use, and refused to treat them as forming part of the estate of the deceased. He also said that the debts of the intestate exceeded the value of the personal estate as shewn by the inventory; and sought an injunction restraining the defendant from selling the real estate without his consent. He also claimed to have it declared that the debenture and the watch and ring formed part of the estate, and that he was entitled to receive from the defendant a half of the value thereof.

E. C. Cattnach, for the defendant.

No one appeared for the plaintiff.

SUTHERLAND, J. (after setting out the facts):—Section 16 (b) of the Judicature Act, R.S.O. 1914 ch. 56, is as follows: "No action or proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right, whether any consequential relief is or could be claimed or not."

A declaratory judgment is sought here, but, in addition, the further relief is claimed, as consequential, of a personal judgment against the defendant for the value of a half share of the personal property in question.

It is contended that, as in the action the plaintiff seeks to recover from the administratrix a portion of the distributive share of the estate to which he claims to be entitled, the relief cannot be sought or granted within a year from the death of the intestate. Under the Devolution of Estates Act, R.S.O. 1914 ch. 119, sec. 32, no "distribution shall be made until after one year from the death of the intestate." See *Slater v. Slater* (1870), 3 Ch. Chrs. 1; *Vivian v. Westbrooke* (1872), 19 Gr. 461.

The right to make a declaratory judgment is a discretionary one under the statute. I do not think, however, that on this motion I am called upon to express an opinion as to whether it should or should not be exercised in the plaintiff's favour.