

In their statement of defence they also plead that the said balance is now owing by the son's estate with interest, and that they are entitled to apply the legacy in payment of the indebtedness of the son's estate to that of the father. They also say that they have been ready and willing to adjust the accounts between the two estates, but the plaintiff has refused to do this.

This action is coming on for trial at Goderich on the 11th inst.

The defendants are moving under Con. Rule 938 and the Trustee Act, 1 Geo. V. ch. 26, sec. 75, by way of summary application to the Court, for an order authorising and permitting them to deduct from the legacy the said sum of \$754.56.

In answer to the motion an affidavit is filed by the plaintiff in which she states that she has recently learned of facts which lead her to believe that there came into the hands of the father certain assets of the son which he did not account for, and that she will be able to prove that there is no such sum as \$754.56 owing by the estate of her husband to his father's estate.

I am not at all sure that a question of this kind can properly be determined on an application for advice in this way. See *Re Rally*, 25 O.L.R. 112; *Re Turner*, 3 O.W.N. 1438. Any disposition, however, which I would make of the motion would not necessarily put an end to the action.

The defendants in their statement of defence did not expressly say that they were willing to pay the balance of the legacy after giving credit for the debt. It is true that upon the motion they have now proposed to do this. The plaintiff is disputing that there is any such sum owing by the son's estate to the father as is alleged by the defendants. Under these circumstances, I think the proper course for me to take is to enlarge this motion to be disposed of by the presiding Judge at the trial of the action. He will also dispose of the costs incidental thereto.
