

universal legatee, subject to the usufruct, and to the payment of certain legacies including that sued for. Among the property was a farm at Côte St. Antoine, which Wm. Clarke afterwards sold to his mother, A. E. Waldorf, charging her to pay the legacies. Mrs. Clarke afterwards transferred it, by donation, to the present defendants, charging them likewise with the payment of the legacies. This property being in the possession of the defendants, the legacy in question was claimed from them.

Besides other defences the defendants demurred to the action, contending :—

Firstly, that there was no privity of contract between the plaintiffs and defendants ; that, although, as between the representatives of Mrs. Clarke and themselves, they might shew that different arrangements were made respecting the charges which the former imposed by the donation, yet they could not be called upon to do so by strangers to the transaction ; and that the action of the plaintiffs, if any, was against Wm. Clarke.

Secondly, that the children ought not all to have sued in the one action, as it deprived the defendants from setting up defences of a different nature to each claimant, which they might require to do.

Thirdly, that the plaintiffs, Capt. W. A. Rainsford and wife, were not authorised to sue for their two minor children, and if they recovered, the defendants had no guarantee that the money would be legitimately applied, they could not give the defendants a valid discharge.

The plaintiff contended that, property belonging to the succession of Simon Clarke, charged with the payment of the legacy in question, being in possession of the defendants, who were in fact the successors of Mrs. Clarke they were liable for the legacies, particularly as legacies had first to be paid out of an estate, and property followed any where was liable to them ; the defendants likewise,