

SUTHERLAND, J.

NOVEMBER 4TH, 1912.

## BAECHLER v. BAECHLER.

*Executors—Application for Advice under Trustee Act and Con. Rule 938—Legacy—Deduction of Amount Due from Legatee to Testator—Pending Action—Adjournment of Motion before Trial Judge.*

Motion by the defendants, the executors of Xavier Baechler the elder, deceased, 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 the applicants to deduct the sum of \$754.56 from the amount of a legacy claimed by the plaintiff.

J. D. Montgomery, for the defendants.

C. Garrow, for the plaintiff.

J. R. Meredith, for the infants.

SUTHERLAND, J.:—Xavier Baechler the elder, by his last will, dated the 1st February, 1906, bequeathed to his son Xavier Baechler the younger the sum of \$1,000. The latter died on the 27th September, 1906; and the plaintiff is his widow and the administratrix of his estate. The father died on the 12th March, 1907; and the defendants are the executors under his will, and letters probate have been duly issued out of the Surrogate Court of the County of Lambton, dated the 30th March, 1907.

The plaintiff on the 18th September, 1912, by writ of summons, commenced an action for the amount of the said legacy, and in her statement of claim alleges that the defendants have refused to pay it in whole or in part.

The defendants plead that the estate of Xavier Baechler the younger was insolvent at the time of his death, and that, for the purpose of protecting it, Xavier Baechler the elder advanced moneys to the First National Exchange Bank of Port Huron, Michigan, and obtained an assignment of certain notes and a chattel mortgage. They further plead that they proved the claim of the father against the estate of the son before the Probate Court of the County of St. Clair in the State of Michigan, that being the Court administering the estate of the son, and received a dividend out of the son's estate which left a balance of \$754.56 unpaid.