

LENNOX, J.

JANUARY 31st, 1913.

RE BEAIRD.

Executor—Absence from Jurisdiction—Refusal to Account before Surrogate Court—Protection of Interests of Infant—Appointment of Receiver—Ex Parte Order—Right to Move against, Reserved to Executor.

Motion by Annie Regan, a beneficiary under the will of William Beaird, deceased, for an order appointing the Union Trust Company receiver of the moneys and property of the estate, for the reason that the executor lived out of the jurisdiction and had refused to account.

W. J. Elliott, for the applicant.

LENNOX, J.:—I think the beneficiary Annie Regan has made out a case for the appointment of a receiver in this matter.

A receiver will be appointed where the executor has been guilty of misconduct, or has improperly managed the estate, or has been guilty of a breach of duty: *Middleton v. Dodswell*, 13 Ves. 266; *Gawthorpe v. Gawthorpe*, [1878] W.N. 91; *Evans v. Coventry*, 5 D.M. & G. 918.

The time which has elapsed without accounting and without information, and the executor's disregard of the proceedings in the Surrogate Court, clearly bring him within these rules and principles.

So, too, a receiver should be appointed where it appears, as it does in this case, to be necessary in order to protect the interests of an infant: *Kerr on Receivers*, 6th ed., p. 15; and where a sole executor resides beyond the jurisdiction of the Court: *Noad v. Backhouse*, 2 Y. & C. Ch. 529; *Westby v. Westby*, 2 Coop. C.C. 210; and particularly if the beneficiaries are unable to get an account from the persons left in charge of the estate: *Dickens v. Harris*, [1866] W.N. 93, 14 L.T. 98.

Here the case is stronger, for there is no one left in charge, and the executor wholly ignores the Surrogate Court when called upon to account.

Generally speaking, however, the order should not be made ex parte, but it may be where the property is in danger: *Rawson v. Rawson*, 11 L.T. 595; and upon the ground of absence from the jurisdiction and other causes above-stated.