

HODGINS v. DIXON—MASTER IN CHAMBERS—NOV. 14.

Pleading—Statement of Claim—Administration.] — Motion by the defendant to strike out the 5th and 7th paragraphs of the statement of claim as shewing no cause of action and being embarrassing. The plaintiff by the statement of claim alleged a debt due by the defendant's testator, who made the defendant his sole executrix and devisee, and asked administration. Probate was granted on the 25th May, 1907. Paragraph 5 alleged that the deceased had lands near Sault Ste. Marie, which the defendant claimed as her own. Paragraph 6 was not objected to, though without paragraph 5 it would not have been intelligible. It alleged that the deceased "in his lifetime appropriated certain of the said lands to be selected by the plaintiff in payment of his debt aforesaid," and went on to claim discovery from the defendant as to the property and estate of the deceased. The Master said that this could be better inquired into at the trial or in the Master's office, if administration were granted. Paragraph 7 stated that the plaintiff had discovered that certain lands in the township of McTavish were still in the name of the deceased, but that the defendant was intending to sell them and would do so unless restrained by the Court. The prayer for relief asked: (1) administration; (2) discovery as in paragraph 6; (3) the right to select as in paragraph 6; (4) a declaration that the McTavish lands were subject to the testator's debts, and an injunction restraining the defendant from dealing with the same; (5) costs; (6) further relief. The Master said that, as paragraph 6 was not objected to, paragraph 5 could not be attacked, as it was only introductory to paragraph 6 and explanatory of it. Nor did paragraph 7 seem objectionable. It merely stated facts as in paragraphs 5 and 6 on which the plaintiff would rely at the trial, as shewing assets in the hands of the defendant, who had filed an affidavit on this motion stating that the testator "left practically no estate of any value," not sufficient even to pay his funeral and testamentary expenses, which were borne by the defendant. There was no improper joinder of causes of action—the existence of the debt was not denied, and there was nothing embarrassing in paragraph 5 or 7. The Master added that it would seem the better course to accept the offer made in paragraph 9 of the statement of claim and allow an order to go for administration. Then, if the plaintiff could not establish anything, he would have to pay the costs. If this were not acceded to, the motion should be dismissed with costs to the plaintiff in the cause. E. G. Long, for the defendant. F. E. Hodgins, K.C., for the plaintiff.