

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 30th March, 1907.

The plaintiff, on the 18th September, 1912, by writ, commenced an action for the amount of 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. Claire 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.

In their statement of defence they also plead that 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 Rule 938 and the Trustee Act, I Geo. V., ch. 26, sec. 75, by way of summary application to the Court for an order authorizing 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 would 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.