

Plaintiff says he is not satisfied with the manner in which defendant is dealing with the property, and asks to have the deed which he made of his interest in the property reformed, for a declaration that he has a charge upon all the estate of the deceased, for the removal of defendant as executor, for administration, and for a receiver.

Defendant says that the deed was not intended to interfere with the rights of plaintiff under the will, and repudiates any desire or intention to deprive him of any rights he may have had. She asserts that she has been and is administering the property prudently.

I may say at once that I find as a fact that the alleged suspicions of plaintiff are groundless, and that defendant, a woman of more than ordinary business capacity, has been and is conducting the business in a prudent and careful manner. So that, even had the law been that the allegations of plaintiff being proved, he would be entitled to relief, he has entirely failed.

The correspondence before action and what took place at the trial make it manifest that this action was really brought to compel the defendant to give some kind of security to the plaintiff for the payment of what he calls his "dowry." I am unable to see how he can have any such right to security, and it is not specifically asked in the statement of claim.

As to the declaration sought, it is important to remember that the sums have been paid practically as and when they became due, and that there is no complaint that any amount whatever is in arrear. The defendant does not dispute her liability to pay these sums, and the only controversy between the parties is whether the plaintiff has a charge upon the real estate for the payment of these sums.

Under the old practice, no such declaration would have been made, the plaintiff not having actually sustained damage: *Brooks v. Conley*, 8 O. R. 549, and cases cited.

The statute which was passed (30th March, 1885), after and no doubt in consequence of that decision, viz., 48 Vict. ch. 13, sec. 5, and which is now sec. 57 (5) of the Judicature Act, provides that "no action or proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right, whether any consequential relief is or could be claimed or not."