

R. Bayly, K.C., for the applicant.

G. N. Weekes, for the plaintiff.

T. G. Meredith, K.C., for the B. W. Greer estate.

J. B. McKillop, for W. H. Wigmore.

MIDDLETON, J.:—The allegations in the statement of claim, so far as now material, are that certain lands in Arkansas were held by the late B. W. Greer in trust for the late J. H. Greer and A. B. Greer. Some of these lands were sold, and the proceeds were received by B. W. Greer and deposited in the bank account of the firm of which he and Wigmore were partners. The unsold lands were conveyed to A. B. Wigmore in trust.

The executor of J. H. Greer now seeks an account and payment.

The action in the Arkansas Court is not by the same plaintiff—the beneficiaries under the will of J. H. Greer, claiming as his heirs, allege the trust and ask that it may be declared.

The question of law suggested is this. J. H. Greer, domiciled in Ontario, by his will appointed M. A. Greer and M. H. Greer his executors, and devised his property, real and personal, to them in trust. M. H. Greer renounced, and probate issued to M. A. Greer alone. This probate has been recognised by the Arkansas Courts. M. H. Greer disclaimed as trustee, and refused to act. It is said that, according to the law of Arkansas, where the land is, when one of two trustees disclaims, the land does not vest in the other. The affidavit is not candid, because it does not go on to explain what should be done. I would infer that a new trustee to take the place of the disclaiming trustee should be appointed.

I cannot see what this has to do with either action. The land is vested in A. B. Greer, and it is asked that he be declared a trustee.

So far as accounting is concerned, the Court here is by no means impotent; and, if necessary, a new trustee can be appointed, so that the defendants can be adequately protected.

So far from being any reason for the staying of the action, the ground suggested is so flimsy and dilatory merely, that it affords the strongest reason for allowing the action to proceed.

The motion against the statement of claim, as pointed out on the argument, is misconceived, because the Rules only contemplate a motion based on the pleading itself; but, quite apart from that, what has been said indicates that this may be found to be no defence at all. I do not determine this, as much clearer evidence as to the law of Arkansas must be given.

Motion dismissed. Costs to the plaintiff in any event.