

clause 10 of sec. 23 shall be brought and tried in the county where letters probate have issued or where the deceased resided. This certainly seems to meet the present case, notwithstanding the form of the pleadings. In all cases it is the substantial ground of the action that is to be considered. A plain statutory provision is not to be nullified by the dexterity of the pleader.

Whether intentionally or not, the plaintiff has framed her action so as to try and evade this difficulty. But the statement of claim recites the will of Mrs. Mendell and the grant of probate to Vermilyea and Farley, and that the "fichu" came into the possession of Vermilyea, "who has never treated it as part of the assets of the estate" of the deceased, but continues to retain it.

The statement of defence alleges that the estate has been wound up and the distribution of the specific legacies allowed as correct by the Surrogate Court Judge.

This, therefore, seems to come within the scope of sec. 23 (10). The plaintiff alleges that this article came into the possession of the defendant, he being an executor. The action arises really out of a will to which letters probate have issued in the county of Hastings; for under that will the plaintiff claims the fichu as a legacy. It is not as if a stranger to the whole proceeding had obtained possession after the executors had been discharged and the estate wound up. Until this had been done the legatee could only have taken action through the executors.

It, therefore, seems that on this ground also the motion is entitled to succeed. The statute is a legislative indorsement of the principle on which Osler, J.A., went in *Macdonald v. Park*, supra, and to which effect was given by Falconbridge, C.J. (on the 29th March last, not reported) in *General Construction Co. v. Noffke*.

Costs, as usual, in the cause.

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RIDDELL, J.

APRIL 26TH, 1910.

KUNTZ v. SILVER SPRING CREAMERY CO.

*Company — Resolutions of Shareholders — Sale of Plant to President — Payment to Directors for Services — Rights of Minority Shareholders — Absence of Fraud — Legality of Transactions — Injunction.*

Motion by the plaintiffs for an interim injunction.

C. L. Dunbar, for the plaintiffs.

G. M. Clark, for the defendants.