

to permit a plaintiff to endorse his writ with one claim, and then without notice to the defendant to make an entirely different claim against him by the statement of claim.

It must be remembered that as the objecting defendants in this case were not parties to the action when the writ was issued the claim now set up in the statement of claim could not have been endorsed on the writ, but when the defendants without objection become parties to the litigation, the plaintiff by his statement of claim may, it seems to me, very properly and without offending any rule of practice, make such claim against the defendants who have as it were thrust themselves into the litigation, as he may see fit. The action was instituted to recover 2 notes made by a deceased person, from his Canadian executor. The claim now is that these notes may be set off against certain notes of the plaintiff in the hands of the defendants, the United States executors, and that the plaintiff may be declared to be entitled to a legacy in their hands free from any claim on the notes which the plaintiff thus proposes to satisfy by set-off. All of this seems to me quite legitimately to be connected with, and arise out of the plaintiff's claim on the notes sued on. The Court being properly seized of the action, and having all proper parties before it, it is bound under the Judicature Act, sec. 16 (h), to deal with the whole question, and it does not seem to me that these defendants are entitled to say that the plaintiff having recovered a judgment on the notes sued on, must then proceed to the United States and litigate the question whether he is entitled to set off his judgment against the notes held by these defendants, and whether he is entitled to his legacy free from any claim of the defendants on the notes held by them.

For these reasons it appears to me that the plaintiff has not in his statement of claim departed from his original cause of action, but by reason of these objecting defendants having become defendants after the suit was instituted, he has a perfect right to present for determination the questions raised in the statement of claim as against them.

The motion is therefore refused with costs to the plaintiff in any event of the action against the defendants other than Snider.