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DARLING V. DARLING—O'NEILL V. SMALL.

[Co. Ct.]

ascertain what payments he has made and whether these have been made to the proper persons. I have also to enquire who are the persons entitled to share in the real and personal estate of the testator, and in what proportions respectively. How can I make these enquiries and report on them to the Court without entertaining and disposing of the questions raised here?

It is said, however, that William Darling is here accounting for his dealings with the estate, and that he should not be delayed or hampered in doing so by this contention which is really one between two of the parties interested, and not between the executor and any other parties.

There may be cases in which an executor may be entitled to say that the passing of his accounts should not wait until all the questions arising in the suit are disposed of, and may claim to have a special report made as to the matters in which he is interested.

Here, however, he seems to have an interest in the question raised, upon the disposition of which his accounts may depend. The claimant by the agreement, the validity of which is now questioned, gave up out of the £100 to which she was duly entitled the sum of £25 in favour of Herbert Darling, and of the remaining £75 she gave up all but twenty ducats, or, in the event of her marrying, thirty ducats a-month to the executor, to make such use of it as he should in his conscience think most in accordance with the intention of the testator.

Besides, she alleges that it was the executor who formed the design of depriving her of the benefits conferred upon her by the will, and that he procured his father William Darling the elder to induce her to forego this; and that William Darling the elder was, in fact, only the agent of the executor, and as such, made the representations and statements by which she was deceived and induced to make the agreement which she did.

The claimant may or she may not be able to prove these allegations. She may be unable to shew that any imposition was practised upon her, or any undue influence used; but, in the meantime, the claim as presented is such as to call for an answer from the executor.

The objection that neither the claimant nor Herbert Darling are parties to the suit is not a reason for refusing to entertain the claim, or requiring a bill to be filed. They are both persons who should be served under G. O. 60, and both have, without being served, appeared by their solicitors, waived service of process, and consented to be bound by the decree as if served.

That the persons to whom G. O. 60 applies are not now, as formerly, made parties in the first instance, is, as I understand it, simply to lessen the costs. Such persons, when they have been served, may, under the terms of the order, upon notice to the plaintiff, attend the proceedings under the decree, although they may not in every case get allowed the costs of doing so.

Now, for what purpose are they allowed to attend the proceedings under the decree if not to watch them, and take part in them, and to raise any questions necessary for protecting their interests, or securing their rights? Here the claimant is before the Court, the question raised is one which materially affects her interest, and I am bound to entertain and dispose of it.

The defendants, William Darling and Herbert Darling, should therefore file such statement or answer to the claim as they may be advised within a limited time. For this purpose, I think, twenty-one days should be sufficient.

IN THE COUNTY COURT OF THE COUNTY OF SIMCOE.

O'NEILL V. SMALL and SHERIFF.

Chattel Mortgage.

Where the payments to be made on a chattel mortgage extend over a year from its date, it is void as contrary to the policy of the Act respecting Chattel Mortgages.

[Jan. 11, 1879.—GOWAN, Co. J.]

This was an interpleader issue. The goods were seized under an execution, in favour of the defendants, against one Elizabeth Sullivan, a daughter of the plaintiff. The plaintiff's claim was founded on a chattel mortgage from Elizabeth Sullivan, dated 3rd January, 1878, and duly registered, containing the proviso, that if the mortgagor