

Mas. Office.]

DARLING V. DARLING.

[Mas. Office.

in the fraud. (3) This may be done where the question of fraud is raised by persons served with copy of decree under G. O. 60.

[Mr. Taylor—Nov. 12, 1878.

This was an administration suit, and the following matter came up upon the proceedings in the Master's Office on the accounts of the executor, W. Darling. The point concerned the payment of a certain legacy and annuity under the will to Madame Rossa, a lady resident in Naples, to which legacy and annuity she had filed a claim. The executor contended that by a written instrument signed in 1859 Madame R. had renounced all benefits under the will on condition of receiving thirty ducats a month for life, and he said that the remainder of the said annuity had been paid to or expended for the benefit of one Herbert Darling, who by the will was to receive the corpus of the annuity after death of Madame R.

Bethune, Q.C., asked that Madame R. be made a party and proposed to impeach the settlement of 1859 on grounds of fraud and mistake.

Bain, *contra*, contended that an instrument cannot be impeached on grounds of fraud in the Master's Office.

The MASTER ruled that the question can be raised in the Master's Office. *McDonald v. Wright*, 12 Gr. 552, is directly in point. For this purpose a statement should be filed setting out the grounds upon which the settlement is impeached. It can then be decided whether the proceeding should be disposed of here or a bill directed to be filed.

A statement having been filed, the latter question came up for decision.

Bain (1) Onus rests on claimant to show that the executor can be called upon to answer her claim. (2) The executor is not directly interested. The chief question here is one of accounting, and he should not be harassed by proceedings to set this settlement aside. (3) Herbert and Madame R., though they have appeared and have consented to be bound by the Decree as though served under G. O. 60, are not parties for all purposes. (4) This is going further than *McDonald v. Wright*. (5)

There has been more than twenty years' delay. (6) Fraud should be raised before the Court, not in Master's Office. (7) A commission to Italy should be necessary.

*Moss, contra*. (1) The executor represents all parties. (2) He is directly interested, and it was he who instigated the settlement. (3) Whenever any objection arises incidentally the Master has to dispose of it: *Buckland v. Rose*, 7 Gr. 440, *Dewar v. Sparling*, 18 Gr. 633, *Kersten v. Tane*, 22 Gr. 547. There is no reason against the Master proceeding. (4) Here the claimant, Madame R., has been brought in, and the Master must ascertain the rights of the parties and of the claimant if she has any. (5) If the arrangement is for the benefit of the estate, the executor is bound to contest the claim now made, and the Master cannot cast the matter on the Court.

Bain, in reply. The executor does not represent Herbert, who alone gets the benefit of what Madame R. gave up; and so he has no interest, and this suit should not be left hanging over him. If the Master finds Madame R. entitled to anything it can only be thirty ducats a month until the release is set aside.

THE MASTER held that, although it was necessary to consider and decide upon the agreement of 1859, this was no reason for refusing to entertain the claim of Madame R. He said:—"There may be cases when on a question raised in the Master's Office it would be proper for the Master to say a Bill must be filed and the question disposed of by the Court, but such cases must be very rare indeed. No question is raised here more important or more difficult than the questions raised there every day. The tendency of the practice and the object of numerous general orders passed during late years have been to extend the powers of the Masters and to enable and indeed require them to dispose of all matters which legitimately emerge during the progress of a reference pending before them. The question raised here has done so. Under the decree I am to take an account of the dealings of the Defendant William Darling with the estate of the testator. I have to