

ORDE, J., IN CHAMBERS.

FEBRUARY 18TH, 1921.

RE MCFARLANE.

*Absentee—Money in Court to Credit of—Application for Payment out to Next of Kin—Presumption of Death—Evidence—Letters of Administration not Applied for—Proceedings under Absentee Act, 10 & 11 Geo. V. ch. 36.*

An application by all the next of kin (except Daniel McFarlane) of the late Emily McFarlane, deceased, for payment out of Court of the sum of \$574.19 now lying there to the credit of Daniel McFarlane, upon the ground that he must be presumed to be dead.

J. R. Roaf, for the applicants.

ORDE, J., in a written judgment, said that Emily McFarlane died on the 4th October, 1913, intestate and unmarried. Letters of administration were granted to Walter McFarlane, a brother of the deceased. In winding up the estate the share of Daniel McFarlane, another brother, amounting to \$451.09, was paid into Court under an order of the Master in Chambers, owing to his whereabouts being unknown.

The evidence on the present motion was that Daniel McFarlane was an unmarried man and if now alive would be 81 years of age. When last heard from he resided in Chicago, U.S.A., at the Inter-Ocean European Hotel. The last seen or heard of him, so far as known, was on the 16th February, 1910, when he left the hotel and did not return. It was stated by the manager of the hotel that his health had been failing. The efforts of the police to find any trace of him then were unsuccessful.

Daniel McFarlane's share of the estate was one-ninth; and the applicants were the other brothers and sisters, and the issue of deceased brothers or sisters, representing the other eight-ninths of the estate.

The learned Judge did not know on what ground the Court had any authority to distribute the money in Court among the other beneficiaries. If Daniel McFarlane was to be presumed to be dead because of his prolonged absence, there was no presumption that he died either before or after his sister's death: Halsbury's Laws of England, vol. 13, p. 500. If he died before, without having issue, then he never became entitled to the money in Court. If he died afterwards, then before a distribution could be made of his share of the estate, letters of administration thereof ought to be granted by the Surrogate Court before any order is made for payment out of the moneys now in Court to his credit.