

DOUGLAS v. SMART—KELLY, J.—NOV. 16.

Receiver—Equitable Execution—Order to Receive Judgment Debtor's Share of Estate of Deceased Person—Defendant Executor and Residuary Legatee under Will—Application for Order for Payment over—Unnecessary Order—Transfer to another Creditor of Benefits under Will.—The plaintiff, being a judgment creditor of the defendant, an order was made by a Local Judge on the 11th October, 1918, appointing the plaintiff receiver, to the extent of his judgment debt and costs, of all moneys coming to the defendant under the will of Sara Jane Tabb, deceased, the defendant being executor and residuary legatee under the will. The receivership was continued by an order of LATCHFORD, J., of the 19th October, 1918. The testatrix died on the 10th September, 1918. One week later, and before letters probate of the will had been obtained, the defendant, by a written instrument, purported to transfer to a creditor of his the benefits to which he became entitled under the will. The plaintiff now moved for an order requiring the plaintiff to pay to the plaintiff as receiver all moneys coming to the defendant from the estate of the testatrix, to the extent of the plaintiff's judgment and costs. The motion was heard in the Weekly Court, Ottawa. KELLY, J., in a written judgment, said that if, since the making of the receiving order, the defendant had paid out or disposed of, or should hereafter while the order remained in force pay out or dispose of, any moneys or other part of the estate of the testatrix to which he was or should become entitled beneficially, he had done so or would do so at the risk of having disobeyed or of disobeying that order. While the haste with which the alleged transfer was effected might excite some suspicion, it was made, whether valid or not, before the receiving order was obtained. The learned Judge said that he was not called upon to consider whether that disposal was valid, or whether, if valid, it amounted to an undue preference. The order, if granted in the form asked for, would not add to or enlarge the effect of the order of the 19th October. Motion dismissed, but without costs. F. A. Magee, for the plaintiff. H. Fisher, for the defendant.