

Of the proofs in relation to the assets of the testator, I shall say nothing; because I shall decree that his executors account; and upon that, the whole case will be sent to the auditor, for the purpose of stating the account from the proceedings and proofs now in the case, and such other proof as may be laid before him.

The supplemental bill of revivor, by which the Court was first informed of the marriage of the plaintiff Anna, after the institution of this suit, made her husband, Lewis Helms, a defendant; and represented him as having a residence beyond the jurisdiction of this Court. Under such circumstances, no more could be done than to warn him by publication, to appear and defend his rights;

**559** \* and if he failed to do so, to assume the truth of the plaintiffs' allegations, and decree accordingly. But after the day limited by the order of publication to appear had elapsed, and before any decree had been passed, Lewis Helms came in by petition, and prayed to be allowed to put in the answer which he then tendered, in defence of his rights.

It was obvious that the matter in controversy, as regarded the executors; and as between Helms and his wife, could not be properly and finally disposed of, until it was determined whether he was to be taken as an active party or not. His pretensions covered the whole matter in dispute. He claimed to have the account taken with him; and to have the legacy paid entirely to him. And consequently, to have allowed the case to proceed to an account between the plaintiffs and the executors alone, with a reservation of all the husband's rights, as they might be introduced at a subsequent stage of the case, would have been, in effect, to pass a decree with an understanding, that a party who stood by, might, if he chose, have the whole matter re-examined and re-adjudicated. This, I refused to allow, and after some delay, the plaintiffs consented that the defendant Lewis Helms, should come in upon his proffered answer. Although I may come to the conclusion that it may be unjust to direct any part of this residuary legacy to be paid to him, yet he should be permitted to assist in taking the account; and have the privilege of excepting to it when reported by the auditor, to prevent his rights from being in any manner improperly involved, or finally compromised to his prejudice.

This is a case of a very singular complexity. The principal object of the suit is to recover a residuary legacy given by the late Carsten Newhaus, to the plaintiff Anna, and to ascertain how much of the testator's estate should be embraced by that bequest. Another object is to have the whole of the legacy thus given, settled upon the plaintiff Anna, to the exclusion of her husband, the defendant Lewis Helms; except so much of it as has been pledged or assigned to the plaintiffs Sumwalt and McFarren. But if the Court should determine that the defendant Lewis Helms, is entitled to any portion of it, then, to meet that event, Mordecai L.