

It is contended by the defendant that the plaintiff can and should seek all the remedies he is asking for in the action, on the passing of the defendant's accounts in the Surrogate Court. It may be so.

While perhaps formerly there might have been a question of the power of the Surrogate Court Judge, on passing the accounts of an administrator, to inquire concerning the whole property which the deceased was possessed of or entitled to at his death, there is apparently now no such question under the Surrogate Courts Act, R.S.O. 1914 ch. 62, sec. 71, sub-sec. 3: *Re Russell* (1904), 8 O.L.R. 481; *In re MacIntyre* (1906), 11 O.L.R. 436, at p. 139.

It may also be that, if the plaintiff is of opinion that the security given by the administratrix is not sufficient in consequence of his claim that the estate is larger than she represented upon her application to lead grant, he can cite or summon her before the Surrogate Court Judge and have that question dealt with to his satisfaction.

This is a motion to strike out the *plaintiff's statement of claim*. Demurrers have been abolished. Consolidated Rule 124 provides that "a Judge may order any pleading to be struck out on the ground that it discloses no reasonable cause of action," etc. It is founded on an English Rule, the effect of which has been considered in a number of cases. . . .

[Reference to *Republic of Peru v. Peruvian Guano Co.* (1887), 36 Ch. D. 489, 495; *Hubbuck & Sons Limited v. Wilkinson Heywood & Clark Limited*, [1899] 1 Q.B. 86; *Worthington and Co. Limited v. Belton* (1902), 18 Times L.R. 438; *Robinson v. Fenner* (1912), 106 L.T.R. 542, 722.]

Our present Rule 124 is similar to old Consolidated Rule 261 (based on the English Rule), the effect of which was considered in *Smith v. Traders Bank* (1906), 11 O.L.R. 24, and it was there held (p. 29) that "the jurisdiction conferred by Rule 261 may not be invoked for the excision of portions of a pleading. It is only where the entire pleading 'discloses no reasonable cause of action or answer' that this Rule applies. Upon that ground alone the defendant's appeal should be allowed. But it should be also stated that the portions of the statement of defence in question do not so plainly disclose no reasonable answer to the plaintiff's claim as pleaded that they should, had the plea not contained the matter set up in paragraphs numbered one and three, have been summarily stricken out: *Bank of Hamilton v.*