

HON. MR. JUSTICE BRITTON.

NOVEMBER 20TH, 1913.

RE M'DEVITT.

5 O. W. N. 333.

*Will — Condition of Forfeiture — “Instituting Proceedings to Set aside Will” — Filing of Caveat not such Proceeding — Accounts — Reference.*

BRITTON, J., *held*, that filing a caveat against the proof of a will is not “instituting proceedings to set it aside” so as to work a forfeiture of the caveator's interests under the will:—

*Rhodes v. Mansell Hill Land Co.*, 29 Beav. 560 and *Williams v. Williams*, [1912] 1 Ch. 399, referred to.

Motion by Thomas Quinn and Charles Thomas Sweeney, a committee, and subsequently executors of the will of Daniel McDevitt: 1st, to pass the accounts of the said committee, and 2nd, to pass the accounts of the said persons as executors, and 3rd, for the opinion of the Court and for advice upon the clause 4 of Daniel McDevitt's will.

E. J. Hearn, K.C., for the applicants.

F. Arnoldi, K.C., for Patrick McDevitt.

J. F. Hollis, for Hugh McDevitt.

J. Tytler, K.C., for John McDevitt.

W. E. Raney, K.C., for James McDevitt.

HON. MR. JUSTICE BRITTON:—The applicants by an order made in Chambers on the 18th day of April, 1912, by Hon. Mr. Justice Middleton, were appointed jointly to manage and administer the estate, real and personal, of the said McDevitt in accordance with the powers conferred and under the directions given by that order. These powers and directions are fully set out in the order. The applicants did many things acting under said order. It was further ordered that these applicants, Charles Thomas Sweeney and Thomas Quinn should receive as compensation for their skill and trouble in so administering the said estate such sum as might be allowed by a fiat of a Judge in Chambers in addition to their lawful disbursements.

Daniel McDevitt died on the 29th day of September, 1912, having made his last will and testament on the 6th day of said September, 1912. The said Thomas Quinn and Charles Thomas Sweeney were appointed executors, and