Where the claim against a deceased's estate is one arising out of a contract of suretyship, the Court will not, unless by consent, direct its investigation except on a bill filed.

Semble.—That administration of an estate will not be ordered by the Court where no legal personal representative has been appointed or dispensed with, though an executrix *de son tort* is before the Court.

Hoyles, for motion.
H. Cassels, contra.

Boyd, C.] [June 22.

IN RE FERGUSON.

Custody of infant—Imbecility of parent.

While the undoubted natural right of a father to the custody and guardianship of his child is undisputed, and while the law imputes ability and inclination to the parent to perform his duty to his child, the right is yet founded upon his actual capacity to discharge this duty, and under certain circumstances the superior claim to the custody of his offspring may be suspended while the incapacity lasts.

A child, three years old, was placed with its maternal grand-parents, who were childless, after the death of its mother. They were comfortably off, treated the child kindly, were willing to educate it, and the grandfather had made a will, in its favor. The father was suffering, and was much enfeebled, both mentally and physically, from the effect of paralysis, and on examination he did not seem to comprehend what the effect of these proceedings were. He had been supported by the persons in whose custody the child was for some time, and a scheme for the future welfare of the child was proposed on his behalf.

The Court refused to make any order changing the position of the parties, as it appeared to be more for the welfare of the child that the father should not have the custody.

Counsel for the respondents requested that the petition be dismissed, as it would appear on the file as a pending proceeding if no order was made, whereupon an order was made dismissing the petition.

Hoyles, for the petition.
Symons, contra.

CORRESPONDENCE.

Our Reports.

To the Editor of the CANADA LAW JOURNAL.

SIR,—Except for your valuable paper it would be difficult to know to the extent we do what the practice is in many points, and what decisions have been arrived at in other matters of interest. This should not be so, with the large staff of reporters we have. It is not fair to the practitioner in Toronto, but with the facilities of attendance at Court possessed there it is a matter of small moment compared to the position of the gentlemen in the country. The usual rule appears to be that no case is reported or even noted unless a judgment in writing be given. This view pervades the reporters from Chambers to the Court of Appeal. A case may be elaborately argued by counsel learned in the law who have admirably presented their case. The point may be one which has but recently engaged peculiarly the time and attention of the Judge, and who has gone over previously, and well considered each question raised by counsel, and therefore feels that nothing but delay can be gained by postponing judgment, thereupon proceeds and disposes of the case in such a manner that both parties are compelled to accept it, as laying down truly the law, and correctly stating the facts; and yet no note is to be found in this decision, as the Judge did not put the case under his pillow, and after sleeping into a state of forgetfulness of the facts and mistiness as to the law, for a year, elaborate a preparation in writing which favours a considerable item in our unread reports. There are cases of great moment decided, from the Practice Court up to the highest Court of our Province, which should have a place in our regular reports, but which are passed over unnoticed. It is a matter of great moment when, as it is with us, a new system is about to be introduced, that all the decisions should be speedily and accurately reported. With the press of work, it is not resonable to expect that these decisions should be in writing. Our present reporters should have the option, either to turn over a new leaf