

Held, that this decision was not one on preliminary objections, nor could any disposition of the matter put an end to the petition. Consequently no appeal would lie to the Supreme Court.

Appeal quashed with costs.

McIntyre, Q.C., for the appellant.

Howell, Q.C., and *Chrysler*, Q.C., for the respondent.

Province of Ontario.

COURT OF APPEAL.

From ROBERTSON, J.]

[March 2.

REGINA v. BONNER.

Crown—Administration—Will—Probate—R.S.O. c. 59.

When a person possessed of real and personal estate dies leaving no known relatives within the province, the Attorney-General, on behalf of Her Majesty, may maintain an action to set aside letters probate of that person's will, executed without mental capacity, and in that action may obtain an order for possession of the real estate; but a grant of administration should be obtained by a separate proceeding.

Such an action under the statute, R.S.O. c. 59, is not for the purpose of escheating, but to protect the property for the benefit of those who may be entitled.

Judgment of ROBERTSON, J., affirmed.

From ARMOUR, C.J.]

[April 12.

SOTENBERGER v. CANADIAN PACIFIC R. W. Co.

Evidence—Negligence—Bodily injuries—Exhibition to jury—Surgical testimony—Inflammatory address to jury—Absence of objection at trial—Excessive damages.

In an action by two plaintiffs for damages for injuries sustained by them owing to the alleged negligence of the defendants, the jury awarded one \$6,500, and the other \$500.

Held, that it was within the discretion of the trial Judge to allow a plaintiff to exhibit to the jury his injured limb for the purpose of having the nature and extent of the damage explained to the jury.

Review of American authorities on this subject.

Held, also, that the trial Judge was right in rejecting evidence offered in regard to another man whose leg had been injured. It was asked that this might be exhibited on the part of the defendants as a sort of offset to the other; but the trial Judge refused to let this be done unless competent evidence was forthcoming to explain the nature of the injury which that man's leg had sustained; and in this he was right, if indeed the evidence was admissible under any circumstances.