

Meredith, C.J.C.P., Lount, J.]

[May 3.]

CARR v. O'ROURKE.

*Executors and administrators—Surrogate Courts—Grant of administration—Nominee of next of kin in Ontario—Discretion—Revocation—Fraud.*

Only one of the next of kin, the sister, of an intestate resided in Ontario, and, upon the consent of the sister and her children, letters of administration were granted by a Surrogate Court to the defendant, the husband of the sister's daughter. A brother of the intestate, resident in the United States, brought this action to revoke the grant. It was stated in the defendant's petition that all of the next of kin had renounced in his favour, but it was plain from the renunciation, which was filed, that this statement was intended to refer only to the next of kin resident in Ontario.

*Held*, that the Surrogate Court had before it all these who were required by s. 41 of the Surrogate Court Act, R.S.O. 1897, c. 59, to be cited or summoned, and the consent and request of all of them that the defendant should be appointed administrator, and, having regard to the nature of the property of the deceased, and the age and illiteracy of his sister, that the judge had not exercised his discretion improperly in directing the grant to be made to the defendant.

*Semble*, that, even if the discretion had been improperly exercised, the grant would not have been revoked.

The practice of the Surrogate Courts in this Province is to apply the provisions of s. 59 of the Act more liberally than do the English courts the corresponding provision of the English Probate Act.

*Held*, also, affirming the finding of the Surrogate Court, that the defendant had not made false suggestions nor concealed material facts for the purpose of obtaining the grant.

*Wilson*, K.C., and *O'Flynn*, for plaintiff. *Aylesworth*, K.C., for defendant.

## Province of Nova Scotia.

### SUPREME COURT.

Full Court.]

SEAMAN v. MCFARLANE.

[Jan. 25.]

*Administrator—Settlement of accounts—Discharged as to moneys paid co-administrator in capacity of solicitor for party interested.*

D. was one of the administrators of the estate of M. and also acted as solicitor, agent and man of business for plaintiff, the widow of M. He received in his capacity as solicitor and agent a large sum in money and securities to which plaintiff was entitled as her share of the estate.