

SECOND DIVISIONAL COURT.

OCTOBER 31ST, 1919.

*RE MORROW.

Appeal—Right of Appeal to Divisional Court from Order of Judge of Surrogate Court Directing that Action be Brought in Supreme Court to Establish Claim—Terms and Conditions of Order—Surrogate Courts Act, sec. 69, sub-secs. 6, 7—Sec. 34 (1), (5)—Appeal Quashed.

An appeal by Robert James Morrow, the executor of the will of Mary Jane Morrow, deceased, from an order of the Judge of the Surrogate Court of the County of Lennox and Addington, made under the provisions of sec. 69, sub-sec. 7, of the Surrogate Courts Act, R.S.O. 1914 ch. 62, upon the application of the executor, directing that Daniel Henry Morrow, a claimant against the estate for \$2,985, whose claim was contested by the executor, should bring an action in the Supreme Court of Ontario for the recovery or establishment of his claim, upon condition, however, that the executor and the estate should bear and pay the extra costs occasioned by this application and by proceeding by way of action in the Supreme Court, instead of proceeding in the Surrogate Court, in any event of the action, and that the action should be brought on for trial at the next sittings at Napanee.

The executor's appeal was against the part of the order imposing the condition as to payment of costs.

The appeal came on for hearing before MEREDITH, C.J.C.P., RIDDELL, LATCHFORD, and MIDDLETON, JJ.

J. C. Thomson, for the appellant.

H. S. White, for the claimant, respondent, raised the preliminary objection that no appeal lay from the order of the Judge.

MIDDLETON, J., read a judgment in which he said that the provisions of sec. 69 of the Surrogate Courts Act related to the establishment of claims against an estate; and the contention was that the provisions of this section established a complete code of procedure with respect to the matter dealt with, and that there was no appeal save that given by the section itself, viz., the provision found in sub-sec. 6, that the order of the Judge dealing with the claim should be subject to appeal as provided by sub-sec. 5 of sec. 34, that is, an appeal to a Judge of the Supreme Court in like manner as from the report of a Master.

A careful consideration of the statute led to the conclusion that that contention was correct.

* This case and all others so marked to be reported in the Ontario Law Reports.