

J. Hamilton, a creditor of the deceased, for an order vacating an ex parte order made by Boyd, C., on the 19th of May, 1898, appointing the plaintiff receiver of the interest of the deceased defendant in the estate of his mother, also appointing Peter S. Furness, administrator ad litem of the estate of the deceased defendant, and adding him as a defendant, and directing a reference for administration, etc., and also for an order vacating the report of a referee made pursuant to such order.

*Held*, that the property and assets to which the defendant was entitled at the time of his death never vested in Peter S. Furness, because of the limited character of the administration granted to him; they vested in the Toronto General Trusts Company upon their subsequent appointment as administrators of his estate and effects, and they were bound to administer the estate, paying the debts so far as the estate would extend, ratably, in a due course of administration. They were "parties" who were affected by the ex parte order of the 19th May, 1898, within the meaning of Rule 538, and were entitled to apply to vacate that order and the report founded on it: *Parker v. McIlwain*, 17 P. R. 84.

That order was based upon the assumption that the plaintiff was the only creditor of the deceased defendant, and that, owing to almost insuperable difficulties, the plaintiff could not, and no one else was likely to, be appointed administrator. The effect and intention of the order was to give all the assets to the plaintiff, and to leave nothing for any one else. No such order would have been made had it been known that any other creditor existed, for the plaintiff had acquired no lien by a former receivership order as to another estate, upon the property not come to the hands of the receiver; *Croshaw v. Lyndhurst Ship Co.*, (1897) 2 Ch. 184; *In re Shepard*, 43 Ch. D. 1.

The report of the referee should not stand, because no advertisement for creditors was issued; this was omitted because of the mistaken notion that the plaintiff, having a receivership order, was entitled to the whole estate, it being too small to satisfy his claim. The Toronto General Trusts Company should be left to administer the estate in the usual manner, but subject to any future order for administration which might become necessary.

Order made vacating the ex parte order and setting aside the report, but without costs against the plaintiff. Costs of the motion to the applicants out of the estate.

*J. H. Moss*, for applicants. *A. McLean Macdonell*, for plaintiff.

Boyd, C., Robertson, J.]

[Dec. 12, 1898.]

IN RE MCINNES v. MCGAW.

*Receiver—Equitable execution—Interest under will—Interference with discretion of executors—Prohibition—Division Court.*

The mother of the judgment debtor by her will empowered her execu-