

for the services of a competent man, and H. was sent by Wisdom to work on said main. While H. was working at one end of a pipe he was injured by gas escaping therefrom being set on fire from a salamander, used in carrying on the work, and exploding. One of the servants of the company whose duty it was to turn on the gas at this pipe every evening, and turn it off every morning, had neglected to turn it off the morning the accident happened, and there was evidence that the salamander had been moved from its usual place, and put near the end of the pipe where H. was working by order of the manager of the company.

In an action by H. for damages from such injury, the jury found that the company was guilty of negligence, and that H., at the time of the injury, was not in the service of the company, but in that of Wisdom. A verdict in favour of H. was sustained by the Full Court.

*Held*, affirming the decision of the Supreme Court of New Brunswick, that the finding as to negligence was warranted by the evidence.

*Held*, further, that whether or not there was a common employment between H. and the servants of the company was a question of fact, and the jury having found that H. was not in the service of the company their finding would not be interfered with on appeal.

Appeal dismissed with costs.

*Haven* for the appellants.

*Currey* for the respondent.

New Brunswick.]

GRANT v. MACLAREN.

[May 10.

*Executors and trustees—Probate Court—Passing of accounts—Res judicata.*

G. was executor and trustee under a will, and as such passed his accounts yearly in the Probate Court. The accounts so passed contained all the charges and disbursements of G., both as executor and trustee, and the beneficiaries under the will were not represented by counsel on any occasion before the Probate Court. A suit in equity having been brought to remove G. from his position as executor and trustee, the judge in equity, before entering upon the merits, ordered a reference to take the accounts of G., and the referee reported that, having taken them, a number of items were disallowed as improper charges. On exceptions to this report, the equity judge held that the action of the Probate Court in reference to the accounts was final, and not open to review by the court in such suit. On appeal, this ruling was reversed by the Supreme Court of New Brunswick, and the referee's report confirmed. On appeal to the Supreme Court of Canada,

*Held*, affirming the decision of the court appealed from, that the Probate Court had no jurisdiction over the accounts of G. as a trustee; and as it appeared that the items disallowed related to the duties of G. in that capacity, the referee could properly deal with them.

*Held*, further, that the Supreme Court would not reconsider the items dealt with by the referee, as he and the Supreme Court of New Brunswick had exercised a judicial discretion as to the amounts, and no question of principle was involved.