

These paragraphs were attacked by plaintiffs as disclosing no reasonable defence or answer to the action.

Defendant contended that the paragraphs could not be struck out at Chambers, but must be set down for argument under Rule 2 of Order 25.

Held, with regard to par. 1 that when the defendant in his defence declined to admit a fact alleged, it was equivalent to a denial, and must be treated as such. Also that plaintiff's evidence as to the falsity of the plea was insufficient to set it aside.

Held, also, that the remaining paragraphs of the defence, alleging points of law, disclosed no reasonable answer to plaintiff's action, and must be set aside.

Judgment setting aside the whole of the defence except par. 1.

Fram., for plaintiffs.

Boak, for defendants.

RITCHIE, J.,
In Chambers. }

[March 16.

SCOTT ET AL. v. SCOTT ET AL.

Executors—Settlement where not final held not conclusive—Citation of parties
—R.S. 5th series, c. 100, s. 63.

Action by legatees under will to compel the defendant executors to give account of the trust estate. An order had previously been granted at Chambers calling on defendants to give such account. Testator died in 1874. In 1881 an account of the trust estate was allowed by the Judge of Probate for the county of Hants, in the Probate Court for that county. In pursuance of the above order the defendants filed an account beginning at the date of the accounting in the Probate Court, viz., 1881. This motion was to compel the defendants to file a supplementary account covering the period from 1874 to 1881 covered by the Probate Court account. Defendants contended that as a citation to parties interested had been issued for that settlement, and the plaintiffs had allowed that account to remain since 1881 unimpeached, it was conclusive against the parties. It was also contended that it was conclusive under the statute R.S. c. 100, s. 63.

Held, that the settlement in 1881 not being a final settlement of the estate, was not conclusive against the plaintiffs, and that the Act regulating procedure in the Probate Court authorized the citation of legatees to no settlement other than the final settlement, and that the plaintiffs were not bound by the partial account filed there.

Order made for supplementary account.

Frame, for plaintiffs.

Christie, for defendants.