

*Held*, affirming the judgment of the judge of the Surrogate Court (York), that he had properly refused to open up the accounts in regard to the purchase of the mining stock referred to, in regard to an alleged overcharge of interest, in regard to the sale of a property without notice to the petitioner, in regard to certain mortgage accounts, and in regard to other matters.

It was contended for the petitioner that the non-disclosure of the fact that the rebates had been allowed amounted to fraud on the part of the trustees entitling the petitioner to have the accounts re-opened and taken de novo, and that, at all events, coupled with the overcharge as to the mining stock, she was so entitled.

The accounts approved by the Judge were brought before him under the provisions of section 72 of the Surrogate Courts Act, as amended by 2 Edw. VII. c. 12 s. 11, and 5 Edw. VII. c. 14, s. 1:—

*Held*, that, under that section, it is only *so far as* mistake or fraud is shewn, and not where mistake or fraud is shewn, that the binding effect of the approval is taken away; and the language of the section plainly indicates that it was not intended that the whole account should be opened up, but that the account should be opened up so as to remove from it anything which, owing to fraud or mistake, had not been charged or had been allowed to the accounting party. The principle applicable to the opening of an ordinary stated account, and the consequences of such an account being opened, do not apply to an account taken by the Court in the presence of the parties, where the persons to whom the accounting is being made are brought before the Court for the purpose of enabling them to challenge, if they will, the correctness of the account.

While the failure to credit the rebates was not due to a mere accidental omission of them from the account, the intentional retention of the small sum not credited, apparently under the mistaken idea that the trustees were entitled to it, did not amount to fraud, or at all events, not to such fraud as would entitle the petitioner to the relief which she claimed or to any further relief than that given to her by the order of the judge.

The petitioner should not have been ordered to pay all the costs of the trustees in the Court below, as she had succeeded to a trifling extent. No costs of the appeal were allowed to either party, but without prejudice to the trustees' right to