

tive, is unjust, in whole or in part, such personal representative may, at any time before payment, serve the claimant with a notice in writing that he contests the same in whole or in part, and, if in part, stating what part and also referring to this section."

The administrator accordingly gave the notice of contestation as provided by sub-sec. 1.

The amount involved in the claim was \$1,161.94; and, upon the learned Judge being applied to by the claimant for an appointment to adjudicate, he pointed out that, as the amount exceeded \$500, he could not dispose of the question in dispute, under sec. 69, unless all parties agreed.

Since the argument, counsel have put in . . . a letter from the claimant's solicitor to the solicitors for the administrator . . . asking whether they wished to have the matter disposed of by the Judge or to have it tried in a High Court action; to which the solicitors for the administrators replied that they were willing to have the matter disposed of by the learned Judge—"provided, of course, that all rights of appeal by either party are preserved."

These terms were accepted, and the learned Judge proceeded to hear the evidence of both parties, and gave judgment in favour of the administrator, whereupon an order was issued in the Surrogate Court disallowing the claim and ordering the claimant to pay costs.

Upon the argument Mr. Kelly objected that the appeal should have been to a Divisional Court, under sec. 34, sub-sec. 1, of the Surrogate Courts Act; but I held that, assuming that the proceedings were properly before the learned Judge under sec. 69, the right of appeal is governed by sub-sec. 6 of sec. 69, as reconstructed by 1 Geo. V. ch. 18, sec. 3, which was in force when the judgment was given, and that the appeal would be to a Judge in the Weekly Court; but, until furnished with the terms of the consent upon which the Judge proceeded, I doubted whether the appeal was competent. The argument, however, proceeded upon the assumption that the learned Judge was authorised by the consent to dispose of the matter either as a Judge of the Surrogate Court or as a quasi-arbitrator between the parties. . . .

I am of opinion that sec. 69 does not confer power on the Judge of the Surrogate Court to adjudicate upon a claim of the character of the one in dispute. The "claim or demand" referred to in sub-sec. 1, when that sub-section is read in the light of sub-secs. 4 and 5, is clearly a claim or demand against the estate by a creditor for payment of a money demand. . . .

[Reference to Williams on Executors, 9th ed., pp. 687, 688,