

a distribution of the surplus of the personal estate to be made after the lapse of eighteen months from the time of granting letters of administration. This can be compelled on the application of any heir or next of kin, and upon the hearing the Judge of Probate is to make a decree for the payment of the distributive share. And the bond which the administrator is obliged to give on his appointment, binds him after having his accounts of administration filed and allowed, to pay the surplus as the Probate Court or other competent Court by decree shall adjudge. There is of course the appeal to the Supreme Court as there is from actions in this division. Within a few years the Probate Courts' jurisdiction has been extended to matters relating to trustees which before that came exclusively within this Court's control. Their accounts are passed and allowed with the same effect as if allowed by this Court (s. 58). A trustee may be removed in certain cases, and a new trustee appointed in his place, and if the estate is in danger of being wasted the Judge of Probate may require additional security (s. 73). I think this extended jurisdiction to the Probate Court must have been intended by the legislature to relieve this Court from the obligation to act, where there exists no special reason why the Probate Court should not act, and where considerations of convenience and expense are in favour of that course being adopted. It has been said that the Probate Court is not a Court of construction, and the late Mr. Justice Palmer acted on that principle in *Parks v. Parks*, N. B. Eq. Cases 382. That case however involved the construction of a will, and it was held that an order of the Court to pay a legacy, which was made under an erroneous view of the meaning of the will, was no protection to the executor who paid the legacy as directed. That however is an entirely different case from this. It arises under a long established practice and jurisdiction. The plaintiff must go to the Probate Court and pass his accounts in order to determine what the surplus personal estate is which the Judge of Probate is required to distribute or to make a decree for that purpose, and the question involved here can thus be easily and inexpensively settled. Under these circumstances I think I should decline to act and leave the matter for the Probate Court.

I have consulted Mr. Justice McLeod as to the course I intended to take, and I am authorized to say that he concurs in it. There will therefore be no order made, as the matter will drop, and there will be no order as to costs.