

Divisional Court.] IN RE MACINTYRE. [Jan. 23.

Surrogate Court—Passing accounts—Executors and administrators—Trustee—Creditor's claim.

A Surrogate Court judge on passing the accounts of an executor, administrator, or trustee, under the provisions of s. 72 of the Surrogate Courts Act as amended by 5 Edw. VII. c. 14 (O.), has no jurisdiction to call upon a creditor of the estate to prove his claim and to adjudicate upon that claim and allow it or bar it. If, however, the executor, administrator, or trustee, has in good faith paid the claim of a creditor before bringing in his accounts the Surrogate judge has jurisdiction to consider the propriety of that payment and to allow or disallow the item in the accounts. Order of the Surrogate Court of Elgin barring the claim of a creditor set aside as having been made without jurisdiction.

J. A. Robinson, for claimant. S. Price, for administrator.

Meredith, C.J.C.P.] [Jan. 30.

WILK v. BRUCE MINES RY. CO.

Railways—Appointment of receiver.

The High Court of Justice at the instance of a creditor of a railway company has power to appoint a receiver both where the company, being situate within the province, is under provincial legislative jurisdiction and where it is under federal legislative jurisdiction if there is no federal legislation providing otherwise.

M. C. Cameron, for the motion. Britton Osler, contra.

Province of Nova Scotia.

SUPREME COURT.

Full Court.] DOUCETTE v. THERIO. [Dec. 9, 1905.

Assault—Forcible removal of trespasser—Liability for excess.

In an action claiming damages for unlawfully assaulting and beating plaintiff, defendant pleaded that at the time the acts complained of were committed defendant was the owner of and engaged in carrying on a lobster factory and that plaintiff entered and created a disturbance and refused to leave, when