

that corporation having consented to act and being also a joint petitioner with the Imperial Bank of Canada.

Daniel Foley also brought into Court the last will and testament of the deceased, and asked probate thereof.

A. E. Elliott, Sault Ste. Marie, for the bank and trusts corporation.

M. McFadden, Sault Ste. Marie, for Daniel Foley.

J. McKay, Sault Ste. Marie, for the official guardian.

JOHNSTON, SURE. CO. J.:—The late Catherine Kehoe, formerly Catherine Brandon, was by this Court on 9th September, 1895, duly appointed administratrix of the estate and effects of Patrick Brandon, deceased, her former husband, who lived in the district of Algoma, and this estate at the time of her death still remained unaccounted for and undisposed of, and the same will now have to be wound up for the benefit of her two children Mary and Patrick Brandon.

The question is, to whom shall the present estate be intrusted for the proper carrying out of the will and the trusts therein contained.

John George Blain having renounced, he need not be considered except that his appointment shews that apparently it was the intention of the deceased to have her interests properly protected by an executor resident in Ontario.

It is contended that Daniel Foley, the executor named, should be appointed, he having the prior right, and, failing him, that the next of kin should be appointed, in preference to the Toronto General Trusts Corporation, the nominees of the Imperial Bank of Canada, creditors of the deceased: Howell's Surrogate Courts Act, pp. 217, 136, 137; Kingsford on Executors, pp. 23-28.

The objection to Mr. Foley is, that he resides in the State of Michigan and outside the jurisdiction of this Court, and at present is a debtor to the estate of the late Catherine Kehoe to the extent of some \$3,000, and would not be a proper person to manage the estate or to care for the infants, to see them properly maintained and educated, and to see to the investment of the funds of the estate, until, under the terms of the will, the youngest child shall come of age.

The next of kin have made no application herein, nor have they appeared on this petition. The fact that the deceased in no way named her husband for the position of executor