

facts. David Kennedy died intestate on the 21st February, 1907, possessed of certain real and personal property, and leaving one son and three daughters surviving (his wife having predeceased him) and one granddaughter, Helena M. Slater, child of Jennie H. Slater, who was a daughter of David Kennedy, and died in 1902. Helena M. Slater died March 31st, 1910. The question for determination is whether she was entitled at the time of her death to a share in the surplus of the personal estate of her grandfather David Kennedy. This involves the construction to be placed on section 2 of chapter 161 (Con. Stat. of N. B. 1903) relating to intestate estates, and will arise in the ordinary course of procedure when a distribution of the personal property is made by the Judge of Probate. It is unnecessary for me to refer to the argument of Mr. Jones, because for reasons which I shall give, I do not intend entertaining the application. Two objections were taken to the proceeding, one, that the case is not one intended to be disposed of on an originating summons, and the other, that in view of the jurisdiction of the Probate Court, this Court, though it has full jurisdiction, would refuse to hear it.

The application is not for the administration of the estate, but simply to determine whether or not this grandchild is entitled to participate in the surplus. It is not necessary to decide the question, but as at present advised I think the proceeding is correct, though some amendment may have been required as to the parties. In fact, *In re Natt*, 37 Ch. D. 517, relied on by the plaintiff as sustaining his contention, arose on an originating summons. See Order 55, Rule 3 (a) and (b).

Without in any way interfering with the jurisdiction of this Court as to the administration of intestate estates, the legislature has created a Probate Court for each county, whose jurisdiction has been from time to time increased, so that it can now deal with trustees' accounts and other matters quite beyond the original area of its jurisdiction. It has always been vested with the power of passing estate accounts and ordering the distribution of the surplusage of the personal property. Section 2 of c. 161, to which I have just referred, enacts thus: "Subject to the provisions of the next following section, the surplusage of the personal estate of the intestate shall be distributed by the Judge of Probate in manner following, &c." Section 50 of "The Probate Courts Act," c. 118 (Con. Stat. N. B. 1903), provides for