

BOYD, C.:—The settled practice appears now to be in England as it has long been established here under the General Orders (now Con. Rules 665, 666, 667), that under a judgment or order to account the Master may inquire into, adjudge, and report upon settled accounts—and this whether the judgment is by consent or otherwise, and whether the matter be referred to in the pleadings or not. That convenient practice, recognized in *Newen v. Wetten*, 31 Beav. 315, is firmly grounded by the Court of Appeal in *Holgate v. Shutt* . . . 27 Ch. D. 111 and 28 Ch. D. 111. . . . *Edinburgh Life Assurance Co. v. Allen*, 23 Gr. 230, which has been followed without question ever since.

But it is said that this prior investigation of the estate accounts before the Surrogate Judge of the locality is not a matter of settled or stated account, but is rather to be treated as *res judicata*, which should be set up in the pleadings. R. S. O. 1897 ch. 59, sec. 72, is this, that the account of the dealing of the executor with the estate being filed and approved of by the Judge shall be binding upon any person notified and attending on the proceedings in any subsequent investigation of the account in the High Court—except in so far as mistake or fraud is shewn in the account so approved. This investigation is substantially an auditing of the accounts, and it was so treated in *Re Russell*, 8 O. L. R. 481, 3 O. W. R. 926. It is just the sort of examination and approval of accounts that was dealt with in the English case cited in 27 and 28 Ch. D., where the audit was by an officer appointed under the rules of a benefit society. . . .

Appeal dismissed with costs.

MARCH 23RD, 1906.

DIVISIONAL COURT.

CAMPBELL v. CROIL.

*Mortgage—Sale—Purchase Money—Default — Deficiency—
Money in Court — Payment out — Creditors of Partnership.*

Appeal by defendant Croil from order of BRITTON, J.,