

Sur. Ct.]

RE SULLIVAN—RE TUG "ROYAL."

[Vice Adm. Ct.]

servants and guests. The sleeping car is obliged to admit the employees of the train to collect fares and control its movement. 7. The sleeping car cannot even protect its guests, for the conductor of the train has the right to put them off for non-payment of fare or violation of its rules and regulations.

Still less can the sleeping car company be considered a common carrier, for the actual contract of carriage is made with the railroad company.

REPORTS

ONTARIO.

(Reported for the LAW JOURNAL.)

IN THE SURROGATE COURT OF THE COUNTY OF ONTARIO.

IN THE GOODS OF M. G. SULLIVAN.

Danger of loss of goods—Appointment of curator until grant of administration.

Where a proper case is made out, shewing danger of the intestate's goods being made away with, the Court has the power to appoint a curator of the chattels, until such time as letters of administration can be obtained in due course.

[Whitby, April, 1883.]

N. F. Paterson applied for an order under the circumstances set out in an affidavit which he filed.

It appeared from the affidavit, that the widow and next of kin of the deceased were unwilling to act, that one Barker, a creditor, had taken steps to apply for letters of administration, but that the papers were not complete, although in course of preparation. That creditors and others were removing, or attempting to remove, goods of the intestate, and that, unless some order be made by the Court to secure them until formal letters were granted, there was danger of loss to the estate.

DARTNELL, J.J.—On consideration, I think this application should be granted. Before the establishment of the Court of Probate in England, in 1857, the personal estate and effects of a deceased vested in the ordinary, who in most cases was the bishop of the diocese. The 19th

section of the English Probate Court Amendment of 1858 Act, 21-22 Vict. cap. 95, enacts that "from and after the decease of any person dying intestate, and until letters of administration shall be granted in respect of his estate and effects, the personal estate and effects of such deceased person shall be vested in the Judge of the Court of Probate for the time being in the same manner and to the same extent as heretofore they vested in the ordinary."

The Surrogate Courts established in Upper Canada in 1859, are the successors of the Court of Probate established in 1793 by 33 Geo. III. c. 8, and the practice of these Courts, where not otherwise provided for, "shall, so far as circumstances of the case will admit, be according to the practice in Her Majesty's Court of Probate in England as it stood on the 5th day of December 1859:" (R. S. O. c. 46, sec. 32).

No property vests in an administrator until appointed by the Court, and then only by virtue of his being an officer of that Court. "A stranger may be appointed, *ad colligendum bona defuncti*," to do what is necessary for the preservation of the property, and to the safe keeping of the same, to abide the directions of the Court: *In the goods of Randell*, 2 Add. 232.

I think an order may go in these terms, appointing Mr. Barker a curator of the property until letters of administration be granted. He is sworn to be a creditor of the estate, and that he is the party by whom application will be promptly made for a grant of letters to him, which will be unopposed by the next of kin.

Order accordingly.

QUEBEC.

VICE ADMIRALTY COURT.

IN RE TUG "ROYAL."

Master's wages—Jurisdiction—Disbursements—Costs

In a suit of the master of a steam tug against the owner for wages and disbursements.

Held, (1) That a Vice-Admiralty Court cannot under "The Vice-Admiralty Court Act, 1863," exercise its jurisdiction so as to give effect to an agreement between the owner and master of a vessel,