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Ireland. Court of Appeal

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This historic book may have numerous typos and missing text. Purchasers can usually download a free scanned copy of the original book (without typos) from the publisher. Not indexed. Not illustrated. 1882 edition. Excerpt: ... creditor might have sued the executor for his own demand, but that is not the frame of the present suit. Section 67 of the Judicature Act saves the then existing procedure, so far as it is not inconsistent with the new Rules. G. O. XVIII., Rule 10, has a strict reference to pleading, and only applies where there is a pleading. G. O. XXVIII, Rule 10, applies to default of pleading. The Plaintiff might have asked for the form of order given in Seton, p. 800. In Owens v. Dickenson (3) the discussion at the first hearing was as to a particular sum ear-marked and defined Appeal. 1881. Boa K Moons. the decree is given in Seton, p. 804. Wlzitaker v. Wright (1) shows what the Court will determine at the first hearing in a creditor's suit, and this is confirmed in Cardell v. Hawke (2); see also Field v. Titmu-ss (3). The effect of a decree pronounced upon admissions cannot be greater than one upon proof. The Plaintiff's demand should be rejected as stale: In re Rutherford; Brown v. Rutherford (4): and it is uncorroborated. See also Barton v. Barton (5), as to dismissing a suit after accounts and inquiries have been directed. MAY, C. J.:--We are all of opinion that the decree of the Vice-Chancellor ought to be affirmed. The case resolves itself into two questionsfirst, whether, by reason of the fact that the executors put in no defence, the case alleged by the statement of claim is to be taken as binding upon them by way of estoppel; and, if not, secondly, whether the Plaintiff has sustained the onus of proof cast upon him as making a claim against the assets of a deceased person. In my view, it is a mistake to say that this case comes within Order XVIII, Rule 10, as to implied admissions of fact. It appears to me to fall rather within...

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Rosa Tarpley:

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