

439; Pollock on Torts, 4th ed., p. 433; Connell v. Town of Prescott, 20 A. R. 49, 22 S. C. R. 147; Edgar v. Northern R. W. Co., 11 A. R. 452; Filer v. New York Central R. R. Co., 49 N. Y. 47; Central R. R. Co. v. Miles, 88 Ala.

MACLENNAN and GARROW, J.J.A., concurred.

NOVEMBER 24TH, 1902.

C. A.

McCLENAGHAN v. PERKINS.

Executors and Administrators—Claim by Executor against Estate—Corroboration—Payment in Lifetime of Testator—Admission—Executor's Compensation—Devise, whether in Lieu of—Construction of Will—Grounds for Depriving Executor of Compensation—Negligence—Mismanagement—Breaches of Trust.

An appeal by defendant Perkins from an order of FALCONBRIDGE, J., in Court, ante 191, dismissing that defendant's appeal from the report of the Master at Ottawa and allowing in part a cross-appeal by the plaintiff. The report was made upon a consent reference to take the accounts in an action for administration of the estates of V. E. Hinton, deceased, and M. S. McGillivray, deceased. The Chief Justice affirmed the Master's findings except in one particular, viz., as to compensation to the defendant Perkins as executor, which he disallowed.

The appeal was heard by OSLER, MACLENNAN, MOSS, and GARROW, J.J.A.

T. A. Beament, Ottawa, for appellant.

W. J. Code, Ottawa, for respondents.

MACLENNAN, J.A.—The first item in question in this appeal is one of \$1,275. The precise form in which this and other items were stated in the appellant's account in the administration proceedings of his father's estate in *Armstrong v. Perkins* is not before us, although it was before the Master. What the Master says about it is this: "In the accounts filed in *Armstrong v. Perkins* there is an item of \$1,200 credited as paid by the estate of Victoria Elizabeth Hinton on the 30th April, 1883." At that time the appellant was passing his accounts as executor of his father, Lyman Perkins, and he was at the same time executor of his sister Mrs. Hinton, who had died on the 25th December, 1882. It seems to have been assumed by all parties that the item of \$1,200 was allowed to the appellant as executor of his father. On taking the present accounts, and on being surcharged with the item