

My own view being that this order would not be a proper one, I have consulted some of my brethren, and we all agree. Where, in litigation, an infant is in the position of a defendant or respondent, according to the well-settled practice of our Court the adverse litigant, no matter what the result, must in the first instance pay the costs of the guardian ad litem of the infant. He may, if the case is proper, be allowed to add them to his own, and so recover them over; but they are in the first instance treated as a necessary part of the disbursements of the successful litigant. The effect of the order sought would be in an indirect way to relieve the present appellant from this obligation.

The Suitors' Fee Fund is established for the purpose of affording a fund which may be resorted to, if necessary, for the protection of infants or lunatics or their property; but it is not intended that it should be used in ease of adverse litigants, nor is the fund established to meet the ordinary expenses incident to securing the due representation of infants in litigation.

If in this case it is necessary for an advance to be made to retain counsel, so that the infant's interest may be adequately represented upon the appeal, it may well be proper for an advance to be made in the first instance from this fund to enable the guardian appointed by the Court properly to discharge his duty; but this must be regarded as an advance to be refunded if and when the amount is recovered in the ordinary course of litigation. To sanction the order now sought would create a precedent resulting in the speedy depletion of the fund in question, and so frustrate the real object aimed at in its establishment.

FALCONBRIDGE, C.J.K.B.

DECEMBER 10TH, 1913

WARDHAUGH v. WISEMAN.

Husband and Wife—Separation Agreements—Release of Dower—Registration—Resumption of Cohabitation—Declaration of Cancellation of Agreements and Release—Action against Administratrix—Corroboration—Costs.

Action for cancellation of certain agreements of separation and a release of dower and for a declaration of the plaintiff's rights as the widow of Alexander Wardhough, deceased.