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MARCH 28TH, 1906.

DIVISIONAL COURT.

RE CHURCH.

*Executors and Administrators—Jurisdiction of Surrogate Court—63 Vict. ch. 17, sec. 18 (O.)—Compensation of Administrators Payable out of Portion of Estate—Trust Fund Set apart—Practice—Intituling of Order.*

Appeal by the executors of Athole Church, deceased, from order of Judge of Surrogate Court of York directing that certain compensation to the administrators with the will annexed of the estate of Eliza J. E. Church should be borne by the estate of Athole Church, deceased.

Athole Church was the son of Eliza J. E. Church and one of the beneficiaries under her will. She died in 1902, and he in 1903, not having received his share of her estate.

The point raised by the appeal was whether a portion of the residuary estate could be charged specifically with the expenses of administering that portion, or whether those expenses should be borne by the whole estate.

J. A. Macintosh, for the executors of Athole Church.

W. B. Raymond, for the administrators of the estate of Eliza J. E. Church.

THE COURT (BOYD, C., MAGEE, J., MABEE, J.), held that the share of Athole Church, having been ascertained and set apart by the administrators, became a trust fund in their hands and ceased to be assets of the estate, and the expenses