

(6) The effect of this is to wipe out the loss of income which had been charged to capital. This was \$16,825, less \$5,000 contributed by Barlow Cumberland. He was entitled on the taking of the accounts to the benefit of this contribution and of a second contribution of \$5,000 as against any liability that he might be under as the result of this declaration.

(7) The investment in Farmers Loan Company shares was an authorised one, and the loss sustained thereon must be borne by the estate.

(8) As a matter of strict law, Barlow Cumberland was not entitled to replace in the estate any portion of the capital withdrawn by him; but that seemed to be immaterial. His share should be reduced by the amounts which he had from time to time actually withdrawn.

(9) Upon the true construction of the will and settlement, the estate became divisible upon the death of the settlor's widow. As it was not then divided, from that time on the entire income of the estate would be distributable among Barlow Cumberland and his sisters, Barlow having a double share; that is to say, that from that time on the sisters' income would not be limited either to \$800 or \$1,066.66 as suggested; and all the previous declarations as to the mode of accounting must be read in the light of this.

(10) No further sums than those charged should be allowed the trustee for compensation.

If the parties cannot agree upon the state of the account based upon the above declarations, there must be a reference.

MIDDLETON, J.

MARCH 28TH, 1918.

CARSON v. MARTIN.

*Sheriff—Poundage—Taxation of Sheriff's Bill without Formal Appointment Served on Execution Creditor—Re-taxation Unnecessary—Motion to Reduce Poundage—Forum—Costs—Unnecessary Contest.*

Motion by an execution creditor to set aside the taxation by a local officer of a sheriff's poundage.

The motion was heard in the Weekly Court, Ottawa.

J. E. Caldwell, for the execution creditor.

A. H. Armstrong, for the Sheriff.