

18 Feb., 1896.

Prince Edward Island.]

MAYHEW V. STONE.

Administrator—Payment of doubtful claim by—Death of administrator—Administration de bonis non—Recovery back of amount paid—Unadministered asset.

M. married a widow with a daughter, S., thirteen years old, who afterwards lived with him as one of his own family. M. died intestate, but had previously provided well for his own children. His widow took out letters of administration and advertised for presentation of claims against the estate. S. presented a claim of \$1000 for services performed for deceased and the administratrix consulted her solicitor and others who advised her to pay it, which she did, and a month after she died. An administrator *de bonis non*, was appointed, who filed a bill in equity to have S. declared a trustee for the estate of the \$1000 and ordered to transfer it to the estate. On the hearing S. gave evidence of a claim for payment for services made by her on deceased in his life-time, and a promise by him to provide for her at his death. The Master of the Rolls granted the decree as prayed for in the bill, but his judgment was reversed by the Court of Appeal in equity on the ground that S. was entitled to recover on a *quantum meruit* the value of her services to deceased according to the terms of the agreement to which she testified, and following *McGugan v. Smith* (21 Can. S. C. R. 263) and *Murdoch v. West* (24 Can. S. C. R. 305). On appeal from that decision:

Held, that the claim of S. having been made *bonâ fide* and paid by the administratrix under competent advice, the money, even if paid under a mistake in law, could not be recovered back by the estate as an unadministered asset.

Appeal dismissed with costs.

Stewart, Q. C., for the appellant.

Davies, Q. C., for the respondent.