

not interfere upon a mere question of quantum, at any rate unless convinced that there has been a substantial miscarriage of justice: see *Connec v. North American Railway Contracting Co.* (1890), 13 P.R. 433.

In this case, having regard to the amount of the claim and all the surrounding circumstances, there could be no reason for differing from the Assistant Master. The case was not much more than a Division Court one, and the allowance appeared to be adequate for the services actually rendered.

The appeal should, therefore, be dismissed; and the learned Judge exercised the arbitrary discretion which he considered that he possessed, by fixing the costs to be paid by the appellant at \$7.50.

MIDDLETON, J., IN CHAMBERS.

OCTOBER 14TH, 1919.

RE COWARD.

*Infant—Custody—Right of Testamentary Guardian—Infant Allowed to Visit Grandmother on Undertaking to Return—Violation of Undertaking—Custody Awarded to Guardian pending Litigation as to Will—Costs.*

Motion by W. M. MacLennan, the testamentary guardian of an infant, for an order for the custody of the infant.

G. H. Kilmer, K.C., for the applicant.

N. Phillips, for Elizabeth Dunlop, the infant's grandmother.

MIDDLETON, J., in a written judgment, said that the applicant was at present the testamentary guardian of the infant. The infant was allowed to visit the grandmother upon the understanding that she would return it to the guardian. In breach of this understanding, she retained the child, and now sought to set up that letters probate of the will were improperly granted, the will not having been duly executed.

The proper course was to direct that the grandmother should restore the child to the custody of the guardian, without prejudice to any proceedings she might be advised to take in the proper Court to set aside the letters probate, and without prejudice to any application that might be made either by the grandmother or the testamentary guardian in the Surrogate Court for the granting of letters of guardianship. It might well be that, even if the will was, as suggested, improperly executed as a testamentary document, it might amount to such an indication of the wishes of the