

dealing with and treating it as if it all belonged to herself, the Master was justified in holding her to an account on the footing of interest, at the legal rate, upon the yearly balances in her hands. This method of fixing the amount which the defendant is to make good for the use of the moneys come to her hands is as fair to her as any of the other methods to be adopted for such purpose. A guardian may be dealt with in this way as well as any other trustee: *Matthew v. Brise*, 14 Beav. at p. 346; Eversley on Domestic Relations, 2nd ed. pp. 584-5.

Costs of appeal apportioned according to success—one-third to defendant, and two-thirds to plaintiff.

As to the costs of the action, there did not appear to have been prior to the commencement of the action any demand of an account or any refusal of the defendant to account to the plaintiff. If an account had been rendered, it would not, looking at the result of the accounting in the Master's office and the large surcharge established, have been satisfactory to or accepted by the plaintiff, and an action would have been necessary. The defendant, as guardian and administratrix, was entitled to have her accounts taken and to be allowed her costs, as between solicitor and client, of the ordinary proceedings for that purpose; but she should not get the costs occasioned by her failure to keep reasonably accurate entries or accounts of her dealing with the estate, nor by the inquiries into her improper dealings with and application of the trust estate and funds, and the costs incurred in these respects should be deducted from her costs. Similar order in this respect to that *In re Honsberger*, 10 O.R. 521; see Judgment Book, No. 8, p. 125.

Judgement on further directions:

1. Declare the plaintiff entitled to the lands set out in schedule B to the report, subject to the defendant's dower, but free from all other claims, charges, or incumbrances, and to two-thirds of the personal estate and rents and profits and proceeds thereof in the defendant's hands, and to two-thirds of the unrealized assets of the estate set out in schedule E.

2. Direct that the said assets be realized and proceeds divided in above proportions, or if parties agree to division in specie, let such division be made.

3. Let defendant's costs be taxed as above, and amount deducted from the moneys in her hands upon adjustment of accounts.

4. Defendant to pay to plaintiff two-thirds of the remainder after deducting such costs; and upon such payment to be at liberty to deduct \$300 allowance for compensation from the amount otherwise payable by her. If the amount not paid by the defendant when ascertained, the plaintiff to be entitled to proceed for the whole sum, and in that event defendant not to be entitled to the deduction.

*J. C. Rykert* and *W. H. Blake*, for the defendant. *Shepley*, Q.C., and *Gilleland*, for the plaintiff.