

which the defendant would pay the amount so found or secure it. These negotiations reached the stage where the documents necessary to carry out the proposed settlement were prepared, but at this point the defendant became indifferent, and the matter rested there.

The evidence shews that George Watson did not keep the assets of the Lynn estate, of which he was executor, separate from his own property, and the assets of the two were so mixed that it was not possible to separate them.

In his defence the defendant sets up that he has no knowledge of the estate of Robert Ford Lynn or of the administration thereof or of the matters referred to in the statement of claim. This contention is absolutely without foundation. Apart from any other means of knowledge he may have, the records in the registry office of the state of the title of certain lands with which the defendant has dealt since he assumed the office and responsibilities of executor of his father's estate, indicate clearly that the Lynn estate had some right, title, or interest in these lands. That of itself was sufficient to have put him on inquiry. He has also set up that he is ready and willing to execute and deliver any conveyance that may be called for, or necessary, of certain property referred to in his statement of defence. But he has not delivered or tendered any such document.

The case is a flagrant one of mixing trust funds and trust assets with assets belonging to the trustee personally, and I entertain no doubt that much of the assets enumerated in the inventory of George Watson's estate, filed on the application for probate of his will, belonged to the Lynn estate. I am equally clear that the defendant had knowledge of this, and that there came to his hands assets in excess of the sum found by the Judge of the Surrogate Court. These he dealt with in a manner not satisfactorily explained in his evidence.

It is unnecessary to review the evidence or further comment upon it; but, to say the very least of it, there was a reckless disregard of the rights of the beneficiaries of the Lynn estate, both on the part of George Watson, the executor, and his son, the defendant, in their manner of dealing with the assets of that estate. For this both the estate of George Watson and the defendant are accountable.

The plaintiffs ask for the appointment of new trustees of the estate of Robert Ford Lynn. The defendant does not object.

There will be judgment for an account of the amount (\$5,439.41) found by the Judge of the Surrogate Court, and a reference to the Master in Ordinary to take the account, including