

The Ontario Weekly Notes

VOL. IX. TORONTO, DECEMBER 24, 1915. No. 16

APPELLATE DIVISION.

SECOND DIVISIONAL COURT.

DECEMBER 18TH, 1915.

RE BECK TRUSTS.

Trusts and Trustees—Executors—Over-payment to Beneficiaries—Trustees of Insurance Fund—Moneys Due to same Beneficiaries—Set-off—Different Parties—Insolvency of Trust Company—Rights of Liquidator.

Appeal by the Toronto General Trusts Corporation and Robert Maxwell Dennistoun, executors of the will of Geoffrey Strange Beck, from an order of MIDDLETON, J., of the 15th November, 1915, made upon appeal from the report of the Master in Ordinary; and cross-appeal by the liquidator of the Dominion Trust Company from the same order.

The Dominion Trust Company and Mr. Dennistoun were the original executors; upon that company going into liquidation, the Toronto General Trusts Corporation were substituted by order.

The appeal to MIDDLETON, J., was by the liquidator, and was heard by the learned Judge on the 23rd September, 1915; judgment thereon was delivered on the 1st October, 1915, dismissing the appeal (see ante 48); but the learned Judge afterwards, upon counsel appearing before him, reconsidered the matter, and allowed the appeal in part, and varied the report of the Master by striking out the first and second paragraphs thereof and substituting new paragraphs therefor.

The executors' appeal to the Divisional Court was upon the following grounds: (1) that the report of the Master was correct; (2) that under an order of the Court of the 20th February, 1915, the Dominion Trust Company were bound to pay over all moneys to the executors, and the fact of the insolvency of the company gave the liquidator no right to be recouped from in-