

The appeal was heard by GARROW, MACLAREN, MAGEE, and HODGINS, J.J.A.

G. H. Watson, K.C., for the appellant.

J. A. Rowland, for the plaintiffs, respondents.

HODGINS, J.A., delivering the judgment of the Court, said that the amount found by the Surrogate Court Judge on the 14th February, 1910, as due by the estate of George Watson to the estate of Robert Ford Lynn—\$5,439.41—could not be disputed except for mistake or fraud; and no evidence was led in that direction. There was sufficient, however, to shew that the appellant received a considerable amount of money from his father's estate, sworn by him for probate at \$6,885.62, and that he paid debts of that estate in full. That being so, the presumption arose that the appellant had sufficient assets to pay all the debts; and he would have the right to recover from those to whom he so paid, their proportion overpaid, if he shewed that that presumption was incorrect: *Chamberlen v. Clark* (1883), 9 A.R. 273. The respondents were entitled to receive any assets which they could identify as belonging to the Lynn estate.

The judgment in appeal found the appellant liable personally for the \$5,439.41, and gave him the privilege of shewing what had become of the assets of his father's estate to the extent of that amount. The judgment should be modified by declaring that the appellant is liable to pay the respondents the sum of \$5,439.41, with interest from the 14th February, 1910; and, if the appellant so elects within two weeks, referring it to the Master in Ordinary to take an account of the dealings of the appellant with his father's estate to ascertain whether the appellant has or has not received that amount, and what amount he has received, and whether he is chargeable therewith and should pay the full amount of \$5,439.41, having regard to the other debts of the estate, and having regard to its assets and liabilities, including that to the Lynn estate, at the date of his father's death. The Lynn estate indebtedness at that date is to be taken as established at \$5,439.41. If the reference is taken, the appellant's liability is to be for the amount ascertained by the Master. The appellant is to receive credit for any assets of the Lynn estate in his hands or for which he is chargeable which he is able to transfer to the respondents, when so transferred.

In other respects the judgment should be affirmed. The reference should be at the appellant's expense; and there should be no costs of this appeal.