

Upon the third ground of appeal I am unable to give effect to the argument so ably presented by Mr. Middleton on behalf of the executors. The one-third of the residuary estate left in the hands of the executors, after they had made the payments directed by the judgment of 3rd May, 1883, they retained by virtue of a bequest thereof to "my said trustees or the survivor of them," as jointly entitled to such one-third. The subsequent division of this money between themselves in equal shares was their own act. The certificate of judgment in the Court of Appeal of 7th May, 1900, declares "that the defendants John Lewis and Robert Morgan are liable to make good and repay such portion of the sum of \$5,510.57 retained by them as their share of the residue," etc. I read this language as meaning and requiring repayment by Lewis and Morgan of that which they had wrongly retained, namely, part of the one-third of the residuary estate jointly retained by them. I find nothing inconsistent with this construction of the formal certificate in the language of any of the opinions delivered by the members of the Court of Appeal (27 A. R. 242)—even if I am at liberty to resort to such opinions to aid in construing the language of the formal certificate of the judgment of the Court, which the Court itself—or the surviving members—declined to alter (*Uffner v. Lewis*, 3 O. W. R. 306). In my opinion, this ground of appeal, therefore, fails. . . .

No costs.

OCTOBER 14TH, 1904.

C.A.

RE NORTH RENFREW PROVINCIAL ELECTION.

RE MACDONALD.

Contempt of Court—Publication of Newspaper Article—Comment on Pending Election Petition—Prejudice—Petition not Prosecuted—Abuse of Forms of Court.

Motion by Mr. Dunlop, the respondent, to make absolute an order nisi to commit Mr. J. A. Macdonald, managing editor of the Toronto "Globe" newspaper, for contempt of Court in publishing in the newspaper on 6th May, 1904, an article commenting on matters alleged to be in question upon a petition pending against the respondent to avoid his election as member for North Renfrew in the Legislative Assembly of Ontario. The article was published and the motion made before the petition came on for trial.