

tiff's daughter represented. Costs to be costs in the cause to the plaintiff unless the trial Judge otherwise orders. C. G. Jarvis, for the plaintiff. T. G. Meredith, K.C., for the defendant.

BADENACH v. INGLIS—SUTHERLAND, J.—FEB. 9.

Settlement of Action—Dispute as to whether Items of Account Included—Reference to Take Accounts—Report—Appeal—Evidence—Absence of Mistake or Fraud—Costs.]—Appeal by the defendant Annetta Blanche Inglis from the report of a special referee upon the taking of the accounts of the estate of Edgar A. Badenach, deceased; and motion by the plaintiff for judgment on further directions and costs. The appeal and motion were heard in the Weekly Court at Toronto. The appeal was upon the ground that the referee should have found that two sums of \$5,098.69 and \$500 due to the defendant Sarah H. Badenach by the estate of Edgar A. Badenach, deceased, were included in the settlement of a former action. SUTHERLAND, J., in a written judgment, said that, after a careful perusal of the evidence, he was unable to conclude that the matters in dispute in this appeal so came up for discussion at the time the settlement of the former action was brought about that it could be said that they were included therein and covered thereby. The parties were represented at the time by careful solicitors, and if the sums now in question had been intended to be included, they would doubtless have been mentioned in the written memorandum. Nothing in the way of mistake or fraud was made out. The appeal should be dismissed with costs.—The costs of all parties of the reference should be paid out of the estate of Edgar A. Badenach. The defendant Sarah H. Badenach should have, against the other parties to the action, the costs of a previous appeal from the report of the referee and of the reference back directed by the order made by HODGINS, J.A., upon that appeal. The first report, in so far as not confirmed by the order of HODGINS, J.A., and the subsequent report after the reference back, are confirmed, and judgment is to be entered pursuant thereto, and the costs of all parties of the motion for judgment should be paid out of the estate. Alexander MacGregor, for the defendant Annetta Blanche Inglis. C. H. Porter, for the plaintiff. D. O. Cameron, for the defendant Sarah H. Badenach.