

were dead. Jordan died in 1882 and Ludlow in 1886. There had been no new trustees appointed in their place: the action was against the executors of Jordan and the alleged breaches of trust were committed by both trustees. On a preliminary objection to the constitution of the suit, Byrne, J., held that the representatives of the last surviving trustee not being before the Court and no new trustees having been appointed, the trust estate was not represented, and no one having the legal title to the trust fund in question was before the Court. The case was, therefore, ordered to stand over to enable the representatives of the surviving trustee to be joined, or to enable new trustees to be appointed and added as defendants.

WILL—"TESTAMENTARY EXPENSES"—SETTLEMENT ESTATE DUTY.

In *re King, Travers v. Kelly* (1904) 1 Ch. 363, a testator directed his testamentary expenses to be paid out of his residuary estate. By statute a certain duty imposed in respect of property settled by will is payable by the executor. The question was, whether this duty was part of the "testamentary expenses." Eady, J., held that it was not, but was chargeable against the settled property.

COSTS—TAXATION—COSTS BEFORE ACTION—PREPARATION FOR DEFENCE BEFORE WRIT—RULE 1002 (29)—(ONT. RULE 1176).

In *Bright v. Sellar* (1904) 1 Ch. 369, the defendant being threatened with the present action for being party or privy to a fraud disclosed in a previous action to which he was not a party, in anticipation of the action and with a view to defending himself, procured a transcript of the speeches, evidence, and judgment in the previous action. The action having been dismissed, for want of prosecution, with costs it was held by Eady, J., that under Rule 1002 (29), (Ont. Rule 1176), the defendant was only entitled to the costs of so much of the transcript of the evidence and judgment as related to the present action.