

of the courses open to me. Plaintiffs have established facts—at least by comparative proof—which render the legality of the course taken and proposed by defendants gravely doubtful. If denied the continuance of their injunction and successful at the trial in establishing their right to the relief they claim, plaintiffs might, and in all probability would, find a judgment declaratory of such rights of little or no value. The contract impugned by them might then have been in great part if not wholly executed. It seems to me better to prevent this and to defer the incurring of debts and the expenditure of money which might eventually prove to be illegal and unjustifiable, until the legality of the course proposed to be taken by defendants can be in due course determined.

Upon plaintiffs undertaking to bring this action down to trial at the ensuing sittings at Welland, the injunction will be continued until the trial. Costs reserved to trial Judge.

ANGLIN, J.

OCTOBER 14TH, 1904.

WEEKLY COURT.

BOYS' HOME v. LEWIS.

Judgment—Construction—Order to Refund Money Retained by Executors—Joint or Several Liability—Interest.

Appeals by plaintiffs and defendants the executors from report of Master at Hamilton.

The appeal of the executors was upon the question of joint or several liability to refund moneys paid to them as legatees by themselves as executors. Leave for this appeal was given by a Divisional Court, 3 O. W. R. 779, on appeal from an order of STREET, J., 3 O. W. R. 625.

W. E. Middleton, for defendants the executors.

A. M. Lewis, Hamilton, for plaintiffs.

D'Arcy Tate, Hamilton, for defendants the Uffners.

ANGLIN, J.—. . . The first ground of appeal taken on behalf of plaintiffs is well founded and should be given effect to.

Upon the second ground of appeal the appellants seem to me entitled to part relief. Instead of being called upon to refund the whole sum of \$235 paid them by the executors for interest pursuant to the report dated 23rd April, 1883, plaintiffs should only be required to refund so much of that sum as represents interest upon that portion of \$5,510.57 to which, upon the new basis of distribution, they are not entitled.