

HON. MR. JUSTICE RIDDELL.

OCTOBER 30TH, 1912.

CHAMBERS.

MCDONALD v. TRUSTS & GUARANTEE CO.

4 O. W. N. 192.

Costs — Action — Reference — Trustees — Conduct of.

Motion by defendants for costs of action and reference taken by plaintiffs at their peril as to costs pursuant to the judgment of Divisional Court herein 16 O. W. R. 507. The Local Master's report on the reference which had become absolute, found nothing due from defendants to plaintiffs.

RIDDELL, J., gave defendants costs of action and reference and of motion.

This is the aftermath of the appeal reported in (1910), 16 O. W. R. 507.

M. Lockhart Gordon, for the motion.

A. F. Aylesworth, contra.

HON. MR. JUSTICE RIDDELL:—There the Divisional Court disposed of all the issues in favour of the defendants; but it was rather suggested than claimed in evidence that the defendants, as trustees, had made charges against the fund which were improper. Accordingly, the Court said: "If it be desired to press such a claim the plaintiffs may have a reference to the Master at Cornwall to take the accounts. This will be taken by the plaintiffs at their own peril as to costs. If this reference is taken the general costs of the action and of the reference will be reserved to be disposed of by a Judge in Chambers after the report . . ."

The plaintiffs took the option given them; a reference was proceeded with, and the Master found that "the defendants being chargeable by the plaintiffs with a sum of \$13.97 less than the amount the defendants are entitled to credit for, the plaintiffs are not entitled to participate further in the proceeds of the sale of the mortgaged property . . ." The report has been filed and has become absolute. The defendants ask that the costs may now be disposed of.

The Divisional Court held that there was no impropriety in the conduct of the defendants so far as was made to appear on the evidence then before the Court; the Master has found that in the other matter, the plaintiffs have nothing to complain of.