

the plaintiff became entitled thereto by survivorship, and that the defendants were "entitled to their costs of defence, under the circumstances, if no appeal."

Under Rule 669, the defendants were entitled to two sets of costs, unless there were circumstances entitling them to but one set.

Where a person finds himself trustee of property, and there is litigation as to who are the cestuis que trust, the trustee's proper course is, as a general rule, to endeavour to make the claimants themselves assume the burden of the litigation; if they do so, the trustee should thereafter merely watch the proceedings.

It was argued that the defendants should have united in a common defence, or that the company alone should have defended. But there existed a substantial doubt as to who were the cestuis que trust, and, until the Court decided the question, the trustee was not aware for whom it held the property. There was no identity or community of interest between the company and the heirs, and therefore the defendants were not by the practice required to unite in a common defence. It would have been unfair to compel the added defendants to entrust their defence to the company—a stranger to them.

Further, the judgment, as above quoted, should be taken to mean that the defendants were entitled to sever in their defence; and the trial Judge's disposition of the costs could not be reviewed. But, on the taxation, the costs of the trustee, after the heirs were added, should be limited to costs of watching the case.

*Appeal dismissed without costs.*

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MIDDLETON, J.

DECEMBER 6TH, 1917.

TORONTO GENERAL TRUSTS CORPORATION v. LACKIE.

*Gift—Evidence of—Property Standing in Names of Mother, Son, and Daughter—Death of Son—Action by Executors—Property Found to Belong to Mother only—Absence of Evidence to Establish Gift to Son and Daughter—Confidential Relationship—Mother under Influence of Son.*

Action by the executors of Donald J. Sellers, deceased, for a declaration as to the rights in respect of certain property standing in the name of the deceased and his mother and sister.