

elect. That devise gave her the freehold, and as tenant of the freehold she could not have dower assigned to her while she held that estate."

This is based upon the earlier decision in *Westacott v. Cockerline*, 13 Grant 80, where Vankoughnet, C., upon the same reasoning, reaches the same conclusion.

The widow is therefore put to her election. If she elects against the will she may then make the further election under the statute to take one-third of the land. If she elects to take her estate during widowhood her dower right is gone, and she cannot then elect under the statute, because the right given to her by the statute is to take the third interest in the undisposed of lands "in lieu of" her dower.

Costs out of the estate.

DIVISIONAL COURT.

APRIL 12TH, 1912.

RE GRIFFIN.

3 O. W. N. 1049.

Executors and Administrators — Compensation — Commission and Costs—Question as to Allowance for.

McWATT, SURRO. J., allowed solicitors \$3,000 for their care, pains and trouble as executors of an estate amounting to over \$100,000, and consisting largely of shares in companies.

MIDDLETON, J., 21 O. W. R. 466; 3 O. W. N. 759, varied above order, and, in lieu thereof, awarded them \$815.73. Appellant, residuary legatees, given costs against executors, if asked.

Re Morrison, 13 O. W. R. 767, determines that the provisions of the tariff govern solicitors' costs.

DIVISIONAL COURT *held*, that there is no fixed rate of compensation applicable under all circumstances for services of executors and trustees. They are entitled to reasonable compensation, and what that is, must be governed by the circumstances of each case.

Robinson v. Pett, 2 W. & T. L. C. Eq. 214.

Chisholm v. Barnard, 10 Gr. 481, and

Thompson v. Freeman, 15 Gr. 385, followed.

That, considering the amount and nature of the estate, \$3,000 was a very reasonable allowance as compensation to the executors.

Order of MIDDLETON, J., set aside, and order of McWATT, SURRO. J., restored.

An appeal by the executors of the will of the late G. H. Griffin, from an order of HON. MR. JUSTICE MIDDLETON, 21 O. W. R. 466; 3 O. W. N. 759, setting aside an order of His HONOUR JUDGE McWATT, Surrogate Judge of Lambton