

but related to procedure only—the liability must be found outside of the section. The Master erred when he allowed those who were de facto directors of the company to escape liability by alleging irregularity in the proceedings of the company leading up to their election—when they assumed to exercise the fiduciary office of director, they became liable in all respects as though rightly appointed to the office.

The directors were not guilty of intentional dishonesty; but more than honesty is required—reasonable intelligence and diligent attention to business. Before paying the extraordinary dividends declared in the case of this company, the directors should at least have had proper and adequate balance-sheets; and they ought not to have divided profits not yet earned.

With respect to the sums paid to the directors as bonuses for their becoming sureties for advances made to the company, it could not be said that this was such a misfeasance as to create liability.

Upon the material before the Court, the amount of dividends paid out of capital—for which alone a case had been made against the directors—did not clearly appear; and there should be a reference back to the Master to ascertain and state for what amount the directors should be liable in respect of dividends paid out of capital in 1912 and 1913.

As success was divided, there should be no costs; but the liquidator should be allowed his costs out of the estate.

MIDDLETON, J.

OCTOBER 20TH, 1915.

RE BILTON.

*Costs—Will—Probate — Unsuccessful Claim under Pretended
Codicils—Claimant not Entitled to Costs out of Estate.*

Application by the executors of Naomi Bilton, deceased, for an order disposing of the costs of a former application: see 8 O.W.N. 553.

H. E. Rose, K.C., for the executors.

J. A. Paterson, K.C., for the University of Toronto.

J. T. Small, K.C., for the Canadian Red Cross Society.

MIDDLETON, J., said that, on looking into this matter carefully, counsel for the Canadian Red Cross Society now aban-