

for her, is barred by 10 Edw. VII. ch. 34, sec. 47. The limitations provided by that enactment apply only to an *action* against a trustee. They have, in my opinion, no application to a case like this, where the trustees themselves come into Court, obtain an order for the administration of the estate in their hands, and upon the reference file an account establishing that at one time they held moneys to which a devisee of their testatrix was entitled. It may well be, as suggested upon the argument, that not only the \$200 to which the appellant was apparently entitled, but much more, was properly expended by the executors. They are, however, under the order which they themselves obtained, liable, in my opinion, to account to her for the \$200 and for her share as a residuary legatee in so much of the items of \$600 and \$348.48 as may not have been expended in administering the estate. On these matters, the appellant may have the reference reopened at her risk. In that event, the executors, who have made no charge for their administration, should be at liberty to claim a reasonable commission. If any moneys are found payable to the appellant, she is to have her costs of the reference back; otherwise she is to pay such costs.

In other respects the report appealed from is confirmed. The direction as to commission and disbursements made by the Master is quite proper under Con. Rule 1146.

The only order I make as to costs is, that the executors are to have their costs of this application—including the costs of the trust company, which I fix at \$10 and direct the executors to pay—out of the fund in their hands, after payment of the judgment of the trust company.

LENNOX, J.

MARCH 10TH, 1913.

### WISHART v. BOND.

*Vendor and Purchaser—Misrepresentation as to Depth of City Lot Sold and Conveyed—Fraud—Motive—"More or Less"—Executed Contract—Rights of Third Parties—Remedy in Damages—Costs.*

Action for specific performance of an agreement for the sale of a house and lot in the city of Toronto by the defendant to the plaintiff, or for damages.